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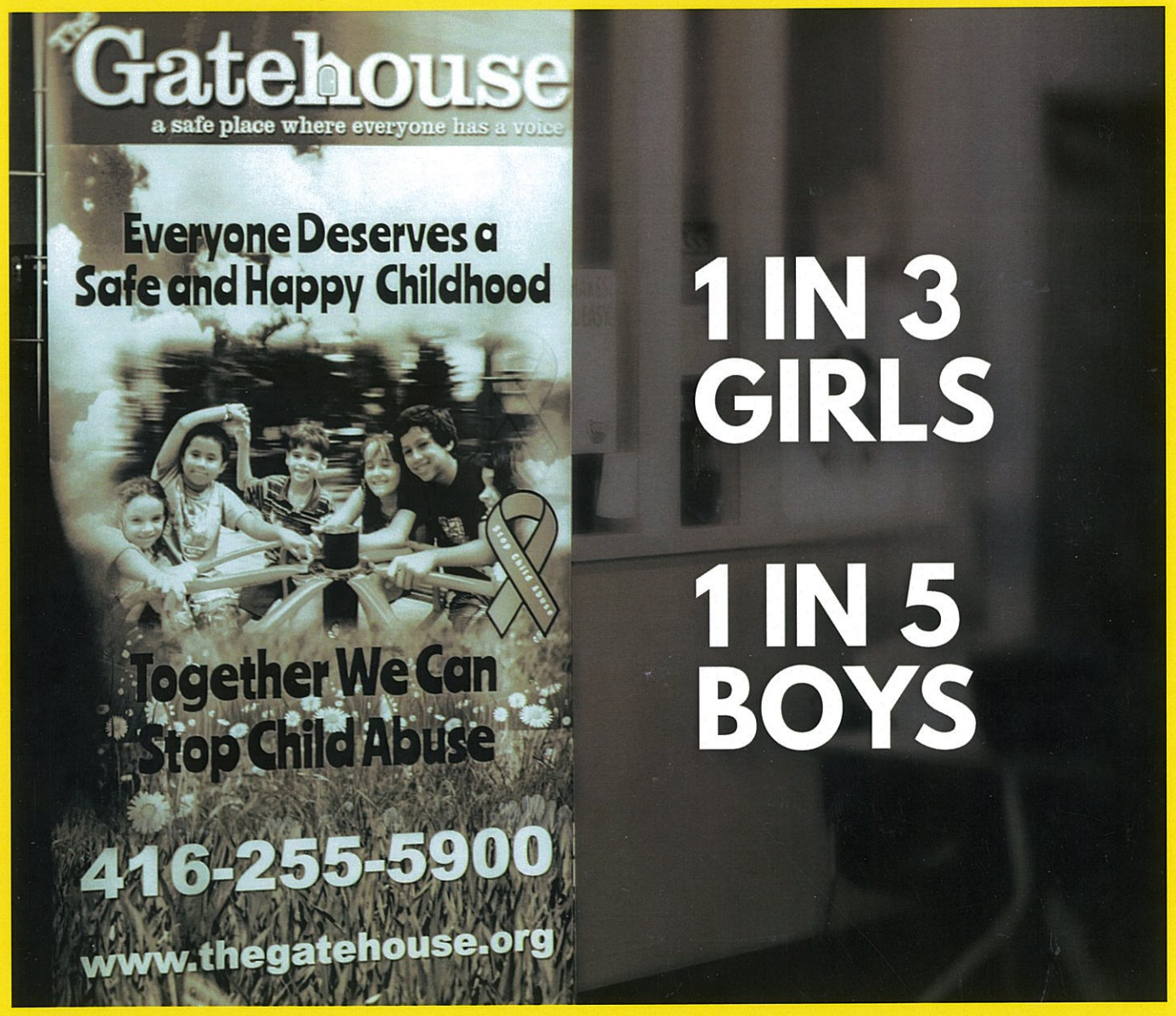
JUSTICE

Vol.33 **ACTUALITÉS - REPORT** No.1

CANADIAN CRIMINAL JUSTICE ASSOCIATION - ASSOCIATION CANADIENNE DE JUSTICE PÉNALE

INTERVIEW WITH "THE GATEHOUSE" HUMAN TRAFFICKING ABUSE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The JUSTICE REPORT contains information of value to Association readers and the public interested in matters related to the administration of justice in Canada. Opinions expressed in this publication do not necessarily reflect the Association's views, but are included to encourage reflection and action on the criminal justice system throughout Canada.

For more information on the activities of the CCJA, please contact:

L'ACTUALITÉS JUSTICE renferme des renseignements utiles aux lecteurs de l'Association et au public qui s'intéressent aux questions relatives à l'administration de la justice au Canada. Les opinions qui sont exprimées ne reflètent pas nécessairement les vues de l'Association, mais y figurent afin d'encourager à réfléchir et à agir sur la justice pénale dans tout le Canada.

Pour obtenir de plus amples renseignements sur les activités de l'Association, veuillez communiquer avec :

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JUSTICE

Vol.33 **ACTUALITÉS - REPORT** No.1

EDITORIAL - ÉDITORIAL • P4
By - Par Irving Kulik, CCJA Executive Director,
directeur exécutif de l'ACJP

.....

"The Gatehouse"- A place of healing for survivors of childhood sexual abuse

& "THE GATEHOUSE" INTERVIEW • P6
By Stefan Horodeckyj
Résumé français • P10

'One for all and all for one': An innovative breakthrough for youth justice and vulnerable youth • P11
By John Winterdyk and Denise Blair
Résumé français • P15

Panorama sur l'histoire de la criminologie au Canada : Article/Recension • P16
Par André Normandeau
English abstract • P19

Wilful promotion of hatred • P20
Policy Review by François Boillat-Madfouny

Fomentation volontaire de haine • P23
Examen de la politique par François Boillat-Madfouny

Restorative Justice Symposium: Global Innovation-Local (R)Evolution • P26
By Stefan Horodeckyj
Résumé français • P28

.....

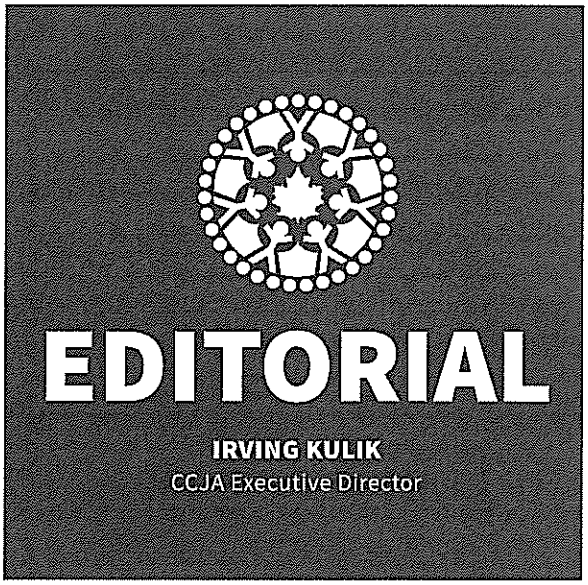
YOUNG RESEARCHER CONTRIBUTIONS
CONTRIBUTION DE JEUNES CHERCHEUR(E)S

Human Trafficking in Canada: Structural Problems and At-Risk Populations • P29
By Cody Hoy
Résumé français • P32

True Stories or Sensational Crime Fiction? Media Bias and Crime Reporting in Canada • P37
By Brandi Chrismas
Résumé français • P39

.....

COMING EVENTS - PROCHAINS ÉVÉNEMENTS • P41



This new year brings us closer to the kickoff of our centenary in 2019, and we are working on a number of initiatives which I would like to share with you. As part of our strategic plan, many of these will be carried out with various partnerships.

I have already announced that our Congress 2019 will be taking place in Quebec City at Hotel Le Concorde, November 5-9, 2019, in partnership with our Quebec colleagues at La Société de Criminologie du Québec. While this will cap our 100th anniversary, other events are already in process.

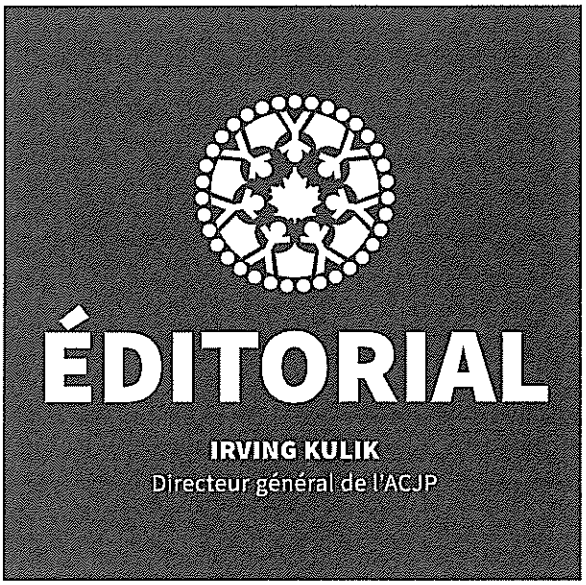
In October 2018 we are planning to co-host a graduate student research symposium in Montreal as a pre-conference event to the International Corrections and Prisons Association's 20th Anniversary Conference. We already have commitments to offer several scholarships to assist graduate students to attend and present at this symposium. For this event we are working with ICPA, Corrections Canada, and the US Academy of Criminal Justice Sciences. More information will be forthcoming as specifics are confirmed.

With the financial assistance of Heritage Canada, we revamped the look of the *Justice Report* starting with issue 32.2 and created a very readable online version. We will soon be hosting a couple of student events at the University of Ottawa and Carleton University to attract student submissions to the *Justice Report*. We very much believe that future growth in CCJA membership is tied to the interest of students. As a quality publication, the *Justice Report* offers excellent opportunities for university students at all levels to hone their writing skills for publication, not to mention their CVs.

The cost of publishing and mailing the *Justice Report* has grown substantially over the course of the last decade. In fact, membership fees—which have not been increased over 13 years—cannot cover the base costs any longer. For this reason, we will need to increase membership fees slightly. Basic membership will rise from $60 to $75, while membership which includes the Journal will go to $175 from $145. As an alternative, we will continue to offer the current rates to those wishing to receive the publications online only, which of course also responds to environmental objectives we all share. Members who choose this online-only option will be able to log on using their membership number. We hope that all members understand our needs while appreciating the quality of our publications in both formats.

Stay tuned for more news and interesting developments. ■

THE CCJA WISHES **GASTON ST-JEAN,** LONG-TIME TRANSLATOR FOR THE CCJA AND A PAST EXECUTIVE DIRECTOR, A VERY HAPPY RETIREMENT. KEEP A LOOK OUT FOR AN ARTICLE ON GASTON'S CAREER IN CRIMINAL JUSTICE - IN A SPECIAL SECTION DEVOTED TO OUR CENTENARY IN 2019!



ÉDITORIAL

IRVING KULIK
Directeur général de l'ACJP

La nouvelle année nous rapproche du centenaire que nous célébrerons en 2019 et j'aimerais partager certains projets avec vous. Comme prévu à notre plan stratégique, plusieurs se concrétiseront sous forme de partenariats.

J'ai déjà annoncé que notre congrès 2019 se tiendra dans la ville de Québec à l'Hôtel Le Concorde du 5 au 9 novembre 2019, en partenariat avec nos collègues québécois de la Société de criminologie du Québec. Ce sera l'événement phare de notre centenaire, mais d'autres sont aussi en cours de planification.

En octobre 2018, nous participerons à l'organisation d'un symposium sur les recherches menées par des étudiants des cycles supérieurs. Il aura lieu à Montréal tout juste avant le congrès du 20e anniversaire de l'International Corrections and Prisons Association (ICPA). Nous avons déjà des confirmations de bourses destinées à aider les étudiants à participer et à présenter leurs travaux. Dans le cadre de cet événement, nous collaborons avec l'ICPA, le Service correctionnel du Canada et l'Academy of Criminal Justice Sciences des États-Unis. Nous fournirons les détails dès que nous les aurons.

Grâce au soutien financier de Patrimoine canadien, nous avons changer l'aspect de l'*Actualités Justice*. Ainsi, depuis la publication du numéro 32.2, vous avez accès à une version que vous pouvez aisément consulter en ligne. De plus, nous organisons quelques événements pour les étudiants des universités d'Ottawa et de Carleton afin de susciter des soumissions d'articles (*Actualités Justice*), car nous avons la ferme conviction que la croissance des adhésions à l'ACJP est liée à l'intérêt que lui porteront les étudiants. *Actualités Justice* est une revue de très grande qualité qui permet aux étudiants de tous les niveaux d'affiner leurs aptitudes rédactionnelles pour la publication d'articles.

Les coûts de publication et d'envoi d'*Actualités Justice* ont connu une hausse substantielle au cours de la dernière décennie. Les frais d'adhésion n'ayant pas augmenté depuis 13 ans, ils ne couvrent plus les frais de base et nous devons donc les augmenter légèrement. Ainsi, l'adhésion de base passe de 60 $ à 75 $ et l'adhésion qui inclut un abonnement à la revue, de 145 $ à 175 $. Cependant, les taux actuels continueront de s'appliquer pour l'adhésion qui ne comprend que la version électronique, ce qui répond aux objectifs environnementaux que nous partageons tous. Les membres qui choisiront l'option électronique pourront se connecter en utilisant leur numéro d'adhésion. Nous espérons que vous approuverez cette décision prise en fonction de nos besoins tout en continuant d'apprécier la qualité de nos publications en format papier et électronique.

Restez à l'affut pour plus de nouvelles qui sauront vous intéresser! ■

L'ACJP SOUHAITE UNE TRÈS HEUREUSE RETRAITE À **GASTON ST-JEAN,** TRADUCTEUR DE LONGUE DATE À L'ACJP ET EX-DIRECTEUR GÉNÉRAL DE NOTRE ORGANISME. POUR DÉCOUVRIR LA CARRIÈRE DE GASTON EN JUSTICE PÉNALE, NE MANQUEZ PAS NOTRE SECTION SPÉCIALE CONSACRÉE À NOTRE CENTENAIRE EN 2019!

"THE GATEHOUSE" - A PLACE OF HEALING FOR SURVIVORS OF CHILDHOOD SEXUAL ABUSE

STEFAN HORODECKYJ
JD (Member of The Gatehouse Board of Directors)

Following a career in criminal law at a private practice in Toronto and providing legal counsel for the Ministry of Correctional Services (MCS), Stefan Horodeckyj currently teaches a course in restorative justice at the University of Guelph-Humber (Justice Department). He has also worked as a corporate policy analyst, ministry inspector, probation and parole officer, and correctional counselor at Millbrook Correctional Centre for MCS. In addition, he has worked as a counsellor at St. Leonard's Half-Way House, Windsor (CSC) and as a psychiatric assistant (CAMH, Toronto). Since 2012, Horodeckyj's article "Get 'Smart' on Crime – Not 'Tough' on Crime" (Bill C-10) was featured in issue 27.1 of the *Justice Report* and he has graced the pages ever since with a number of vivid articles on restorative justice.

While normally conducted by the CCJA, the Interview for this issue was sent in with this article by Toronto lawyer Stefan Horodeckyj and involves ***The Gatehouse*** *founder (Professor Arthur Lockhart), Executive Director (Maria Barcelos), and a Lead Volunteer Facilitator and survivor of childhood sexual abuse (Stewart Thompson).* ***The Gatehouse*** *is a community-based center in Toronto, Canada that has received many accolades. Unique worldwide in providing services for children, youth and adults in a single location,* ***The Gatehouse*** *incorporates principles of both restorative and transformative justice.* ***The Gatehouse*** *staff also provides consultation services regarding issues of childhood sexual abuse to local, provincial, national and international organizations. It is the author's wish that third parties, including governments, NGOs and not for profit organizations collaborate in a meaningful way to provide the resources and human services needed to effectively deal with childhood sexual abuse—pressing social issue that has existed from time immemorial and will not go away on its own. The Interview segment appears at the end of this article.*

The Gatehouse is a unique community-based center in Toronto, Canada. It was founded in 1998 by Professor Arthur Lockhart. It provides supports, resources and advocacy on behalf of those impacted by childhood sexual abuse. It is the only community-based setting in the world that provides services for children, youth and adults in one location. The Gatehouse offers without cost, among other services, adult and young adult psycho-educational peer support group programs for survivors of childhood sexual abuse.

The Gatehouse incorporates principles of both restorative and transformative justice. Restorative justice attempts to repair the harm that has been done as a result of a crime, sexual abuse for example. Transformative justice addresses the elements that potentially lead to crime in the community, before a crime occurs. A key feature of both restorative and transformative justice is that they encourage victims, offenders, community members, and justice agencies to collaborate collectively. The healing that takes place also strengthens the relationships between these stakeholders and the transformative process itself.

The Gatehouse staff also provides consultation services regarding issues of childhood sexual abuse

to local, provincial, national and international organizations. These organizations, to name only a few, include:

- ▷ Ontario Ministry of the Attorney General's Advisory Committee on Services for Male Survivors of Sexual Abuse,
- ▷ Toronto Police Service,
- ▷ The Ontario Police College,
- ▷ The Federal Office for Victims of Crime,
- ▷ Beyond Borders,
- ▷ Child & Youth Advocacy Centre,
- ▷ Cornwall Public Inquiry for Adults Victimized by Sexual Abuse,
- ▷ Find Help Information Services,
- ▷ International Association for Chiefs of Police,
- ▷ Male Survivors Project London England,
- ▷ UNICEF Liberia and,
- ▷ Federal Department of Justice.

As well, **The Gatehouse** has been designated by police services as a best-practice site on the conducting of investigations related to childhood sexual abuse.

The Gatehouse and its staff have received the following accolades for their work:

- ▷ Canada's Top 50 Champions of Change,
- ▷ Nomination for the Order of Canada,
- ▷ Mayor's Community Safety Award,
- ▷ Stand Up for Kids Award,
- ▷ The Distinguished Community Service Award,
- ▷ Paul Harris Fellow-Rotary International Award,
- ▷ Ruth Atkinson Foundation Award,
- ▷ Toronto Community Foundation-Vital Ideas Award,
- ▷ Youth Philanthropy Award and,
- ▷ The Gem of the Lake Shore Award. ■

Thursday October 4, 2018

HEALING THE VOICE WITHIN

SUPPORTING SURVIVORS OF CHILDHOOD SEXUAL ABUSE THROUGH ART THERAPY PROGRAMS

NISKER, TEDD, POLYMORPH, ACRYLIC ALKYDS ON CANVAS, 2017

www.thegatehouse.org

"THE GATEHOUSE" INTERVIEW

S. HORODECKYJ, JD ◆ What inspired you to found The Gatehouse?

PROFESSOR ARTHUR LOCKHART - The Gatehouse Founder: There is a story about a young man who had lost his leg in a tragic accident. The young man made his way to a Buddhist monastery. He was extremely angry at life, and he always drew pictures of cracked vases and damaged things because he felt damaged. Over time, he found inner peace and changed his outlook, but still he drew broken vases. His master asked him one day: "Why do you still draw a crack in the vases you draw, are you not whole?" And the young man replied: "yes, and so are the vases. It is through the crack that the light gets in to nurture the wholeness of both the vases and the wholeness of me."

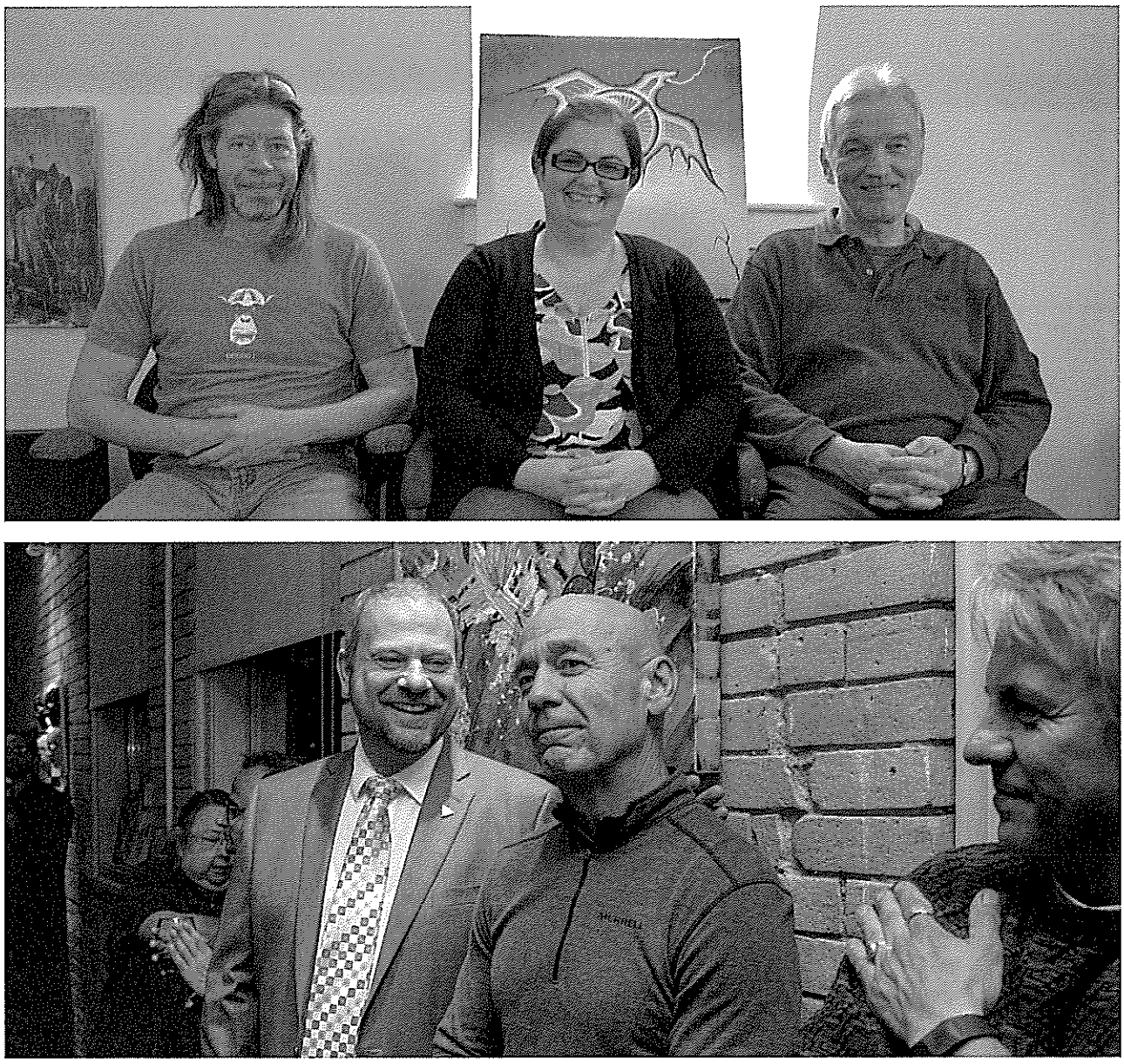
So often in our world we hide pain, we numb pain, and we turn away from the light. We most certainly do not seek a way to go into the pain, be with the pain. Our pain can even become the property of others: the legal other, the systemic other, and despite the honourable intentions of these others, we can become more and more removed from our pain in a way that ironically creates more pain and the ancillary symptoms of pain: isolation, addiction, loss of voice, dissolving relationships, a sense of disconnection from everything; on and on we slide backwards into darkness.

When we come to explore, deeply, and meaningfully, the experience of childhood sexual abuse, we use language such as transformation, triumph, developing new eyes, developing new ways of being. But in order for these words to have any depth, or substance, it is critical that we embrace an inherent obligation. This obligation asks us to go into the dark places in order to find and expand the crack that lets in the light. Letting in the light allows us to choose to bear witness to the unbearable, to speak the unspeakable. And, here we experience the surfacing of one's voice and one's profound transformation of trauma into triumph. (Lockhart 2014, "Letting in the Light")

S. HORODECKYJ, JD ◆ What is the greatest challenge in providing support for survivors of childhood sexual abuse?

MARIA BARCELOS - Executive Director of The Gatehouse (thegatehouse.org): Childhood sexual abuse (CSA) is a huge social issue, yet society virtually shuns it. Consequently, little monies and resources are invested for CSA-survivor healing. CSA is a global epidemic. In Canada, 1 in 3 girls and 1 in 5 boys experience an unwanted sexual act before the age of 18. Millions of children, boys and girls, in urban and rural communities are victimized worldwide. CSA knows no socioeconomic boundaries.

For the past 19 years The Gatehouse (TGH) has operated without a specific ongoing core funding source and has relied on grants, donations and gifts from local, provincial and federal sources. Sustainable funding support is needed for places like TGH to be able to continue to provide the life-saving peer support group programs for survivors. We often hear from adult survivors that the offender may get some jail time, but the victim gets a life sentence."



TOP PICTURE FROM LEFT TO RIGHT: Stewart Thompson, Maria Barcelos and Stefan Horodeckyj.
BOTTOM PICTURE: Bruce Mckay, Board Chair and Arthur Lockhart, Founder. PHOTO CREDIT: Edison Yao, Unicorn Studios.

S. HORODECKYJ, JD ◆ What brought you to The Gatehouse and how did you benefit from the programs?

STEWART THOMPSON - Lead volunteer facilitator and survivor of childhood sexual abuse: I first came to The Gatehouse (TGH) in 2011. Prior to attending TGH I had completely isolated myself from friends, family and society, and struggled with drug and alcohol addiction as a result of my childhood sexual abuse. As well, I attempted suicide.

At TGH I completed the phase 1 and phase 2 peer support programs. These are programs attended typically by 6-10 survivors on a voluntary basis and guided by 2 trained facilitators, one being a survivor. Phase 1 was a program for men - once a week for 2 hours and ran for 15 weeks. Phase 2 is a co-ed program for men and women - once a week for 2 hours and runs for 16 weeks. In these groups, through nonjudgmental listening and in a respectful and compassionate atmosphere, I felt safe to share my deepest and darkest secrets concerning my childhood sexual abuse; to listen to others share their stories of childhood sexual abuse; to find my voice; and ultimately to resurrect my self-esteem. Subsequently, upon graduation, I was asked to be a peer support facilitator in these programs. I am currently a lead facilitator. As well, I started a weekly web radio show a couple of years ago at TGH to help others who have not yet found their voice.

I am extremely grateful to TGH founder Arthur Lockhart, TGH staff and the volunteers who changed my life forever.

ARTICLE CONCLUSION

The invaluable work The Gatehouse has been doing for almost two decades in the area of childhood sexual abuse cannot be underestimated. It is the author's wish that third parties, including governments, NGOs and not-for-profit organizations, collaborate in a meaningful way to provide the resources and human services needed to effectively deal with childhood sexual abuse. This is truly a huge and pressing social issue that has existed from time immemorial and will not go away on its own. ■

COVER PHOTO CREDIT: Edison Yao, Unicorn Studios

RÉSUMÉ

The Gatehouse - A Place of Healing for Survivors of Childhood Sexual Abuse

STEFAN HORODECKYJ, JD
Membre du conseil d'administration, The Gatehouse

Bien qu'elle soit normalement produite par l'ACJP, l'entrevue de ce numéro nous parvient de l'avocat et auteur, Stefan Horodeckyj. L'article inclut le texte de l'auteur ainsi que son entrevue avec le professeur Arthur Lockhart et Maria Barcelos, respectivement fondateur et directrice générale de la maison **The Gatehouse**, et Stewart Thompson, un survivant. Un centre communautaire de Toronto (Canada), **The Gatehouse** a reçu de nombreux hommages. L'organisme est unique en ce sens qu'il fournit des services aux enfants, aux jeunes et aux adultes en un seul endroit et qu'il incorpore les principes de justice réparatrice et transformatrice. Le personnel offre aussi des services de consultation sur les problématiques liées à l'agression sexuelle des enfants. Ces services sont offerts à l'échelle locale, provinciale, nationale et internationale. L'auteur souhaite que les tierces parties, incluant les gouvernements, les ONG et les OSBL, collaborent de façon significative dans l'offre de ressources et de services requis pour traiter efficacement ces agressions, un enjeu social qui a toujours existé et qui ne disparaîtra pas par magie. La portion « entrevue » se trouve à la fin de l'article.

'One for all and all for one': An innovative breakthrough for youth justice and vulnerable youth

JOHN WINTERDYK
Professor of criminology, Mount Royal University, Calgary, AB.
Any correspondence should be directed to: jwinterdyk@mtroyal.ca

DENISE BLAIR
Founder and Executive Director – Calgary Youth Justice Society (CYJS)

*This trailblazing article reports on how a Calgary program—**In the Lead**—was designed to help vulnerable youth get on the right track and could easily be adapted for use in the criminal justice system. Winterdyk and Blair point out that this resiliency-based leadership and character-development program was developed and implemented by the Calgary Youth Justice Society (CYJS) and operates on the premise that most young persons do not willingly engage in juvenile or anti-social behaviour, but the risk of their acting out increases exponentially given a range of traumatic experiences that may occur during the formidable years of adolescent development. The capacity-building imperative of **In the Lead** model meets the needs of many young offenders, has been deemed successful, is extremely adaptable, and is a natural fit for diversion provisions in the Youth Criminal Justice Act (YCJA). As such, the authors recommend rolling out a program based on the **In the Lead** program across the Canadian youth criminal justice continuum.*

"We must look at our youth in need not as problems but as individuals with potential... I would hope we could find creative ways to draw out of our youth the good that there is in each of them".
– Archbishop Desmond Tutu[1]

As Desmond Tutu, among many others have commented, adolescence (ages 12-18) is fraught with varying degrees of physical and psycho-social challenges. The transition from adolescents to adulthood is seldom uneventful. As a result, over the years, a wide range of formal and informal initiatives have evolved to address the various expressions young people exhibit when trying to navigate their challenges. Arguably, as is the case in most nations, Canadians are fretful about law and order and in the aftermath of the invention of adolescence and delinquency (over 200 years ago), we have tended to view the adolescent years as a disquieting and difficult stage in the life cycle.

As a result, the primary response mechanism that has played a predominant role when young persons engage in anti-social and/or deviant behavior is the Canadian youth criminal justice system. Since the creation of the Juvenile Delinquents Act (JDA) in 1908, the legislation has undergone several notable amendments, revisions, and ideological shifts. One overarching theme that has remained consistent throughout the legislative iterations, however, involves the provision to hold young persons' accountable for their actions. This moralistic-

based response aligns with the age-old principle of retribution – those who commit a 'wrong' deserve to suffer a proportionate punishment. However, since the JDA first came into effect, the various Acts (JDA, Young Offenders Act (YOA), and now the Youth Criminal Justice Act (YCJA)) have also been informed by the principle of *parens patriae* – meaning that political authorities have the right and obligation not only ensure the safety of the public but to also rehabilitate and/or reintegrate 'wayward youth'[2] back into society. For example, under the former YOA and the current YCJA, one of the key objectives of both Acts was to promote, whenever feasible, a rehabilitative and welfare approach to the handling of young offenders and vulnerable (e.g. homeless/street youth, new immigrant youth, Indigenous youth, etc.) youth. This idea is clearly captured in the Preamble and Section 3 of the YCJA (see s. 3.1a.ii) and is addressed more comprehensively in Part 1 of the Act under the heading Extrajudicial Measures (EM).

Although the YCJA is federal legislation, its administration falls within the purview of the provinces and territories. Therefore, because of differences in the availability of local resources, political agendas, etc. there is a considerable variation in how the provinces and territories deal with those youth who are vulnerable but have not necessarily committed any official legal transgressions. It is mostly here where innovative and creative initiatives can be found, especially as they relate to vulnerable youth.

CREATIVE ADAPTION OF AN EXISTING PROGRAM TARGETING AT-RISK YOUTH

The focus of this article is on one such program that, while designed for vulnerable youth, can also be readily adapted for youth who become involved in the youth justice system. We will first focus on the program itself and then suggest how and why it could be adapted for young offenders because to paraphrase former President G.W. Bush when, in 2002, he introduced the *No Child Left Behind Act* -- 'no (vulnerable) child should be left behind'.

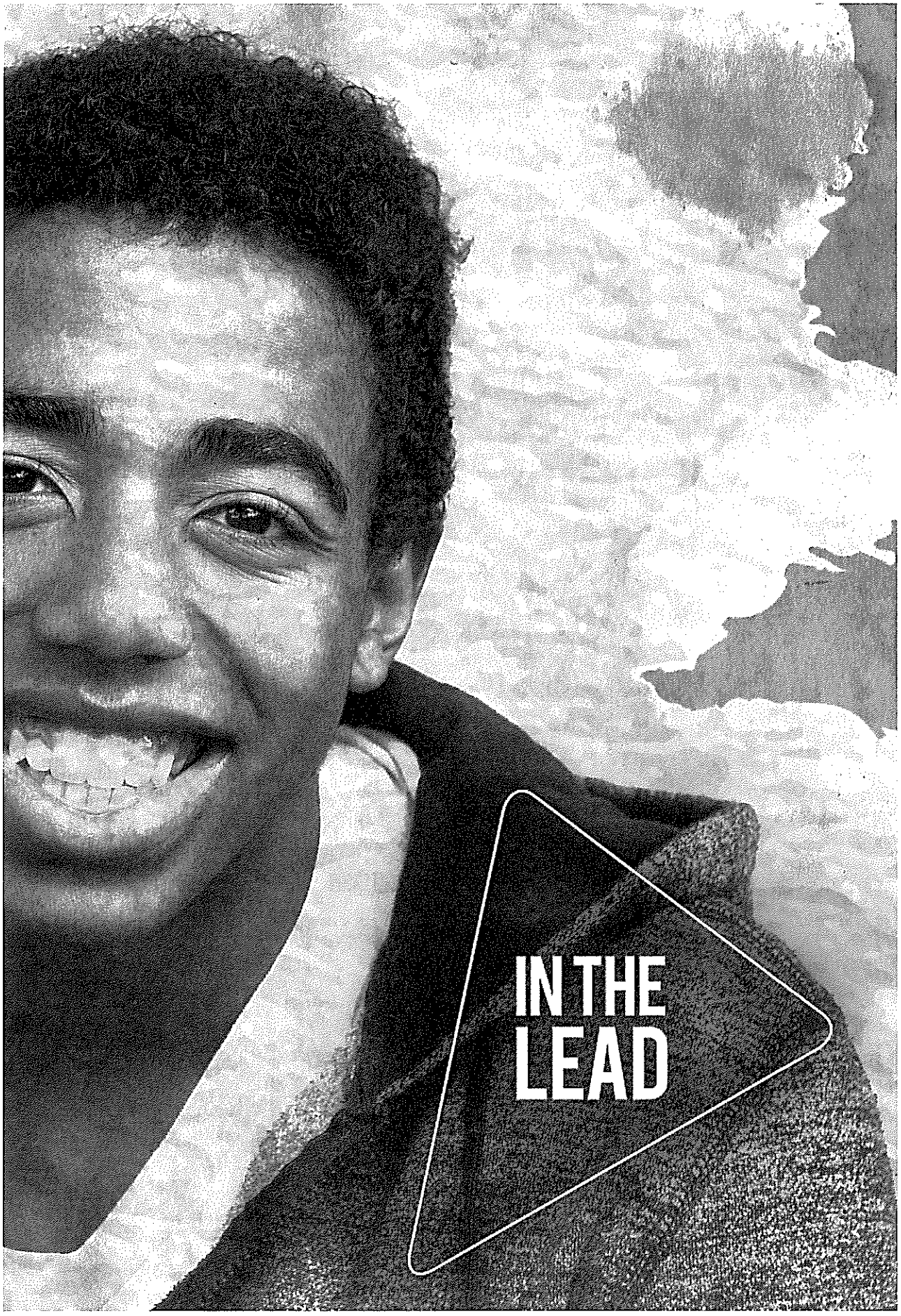
FILLING A VOID IN THE CANADIAN YOUTH JUSTICE SYSTEM BY EXTENDING THE IN THE LEAD PROGRAM TO YOUTH OFFENDERS

Established in 1996 under the then YOA, the Calgary Youth Justice Society (CYJS) was created to fill a void that had existed under the JDA. That is, under the JDA there was limited provision to use alternative measures (i.e. effectively and timely non-court response options) for young offenders who commit less serious offences. However, the opportunity for the creation of the CYJS was made available in the establishment of Youth Justice Committees under the YOA. CYJS Founder and Executive Director, Denise Blair combined the knowledge gleaned through an undergraduate degree in criminology along with a Master of Business Administration to explore alternative ways by which the CYJS could create a program(s) that could produce positive outcomes for its youth clients and that would transcend the growing diversity of the youth population in the city. However, being an NGO with limited funds, an innovative approach was crucial.

IN THE LEAD: A RESILIENCY-BASED LEADERSHIP AND CHARACTER DEVELOPMENT PROGRAM

Recognizing that most troubled youth; despite their strengths and leadership ability, sometimes simply lack the knowledge, experience, and support to make informed choices during their formative teenage years, it was decided to try and create a leadership-oriented (i.e. strength-based perspective) program based on mentoring/coaching (i.e. relationship building) and experiential education models, as well as on youth resiliency development. The 'In the Lead' program "engages challenging youth in a strength-based manner" (Hammond & Donnon, 2012: 7).

Drawing on financial and resource support primarily from Calgary's corporate sector, in 2009 the CYJS developed a 16-week program whereby approximately 30 participants (i.e. 15 young leaders (ages 14-18) and 15 adult corporate coaches) are provided with innovatively designed experiential and team-learning opportunities that draw on the aforementioned elements. The youth are first nominated for the program based on their perceived potential and then carefully paired with a caring adult volunteer based on gender following an interactive session. Critical to the relationship is a focus on helping the young person to discover and build on their strengths as opposed to the conventional approach of 'correcting'/'fixing' the young person's situation and/or behaviour. The program is considered reciprocal in many ways, as both the youth and volunteer can learn from each other and grow in their own ways.


IN THE
LEAD

A few years ago, an evaluation of the **In the Lead** program revealed it to be successful on virtually all counts and its objectives were being achieved. To highlight some of the findings, the youth participants developed:

- A stronger awareness of the importance of directing their efforts towards positive outcomes (e.g. education, leadership, work ethic, etc.);
- Skill sets that foster problem solving, planning, moral and ethical values;
- Enhanced positive relationships with peers, family and community;
- Increased engagement with school;
- Stronger self-reliant skills to cope with diversity and challenges; and
- Clearer understanding of the value of being respected, trusted, and valued (Hammond & Donnon, 2012).

In addition to the **In the Lead** program being beneficial for the youth, the study results also revealed that the 'coaches' indicated having come away from the experience in a variety of areas, such as becoming better listeners, learning how to engage others (especially youth) in respectful ways, and increasing commitment to their employers' company values.

IN THE LEAD: THE ART OF POSSIBILITY

In essence, **In the Lead** is designed to enliven protective factors through helping vulnerable youths to tap into their potential as opposed to having their risks managed. As expressed by several parents whose son/daughter went through the program in the organizations video, "Strong not Wrong" – the program furnished their child with the insight and support they needed to become leaders, self-reliant, as well as how to get through tough times. To paraphrase from the work of Zander and Zander (2002), the program epitomizes the 'art of possibility' in youth.

Another innovative aspect of the program and one that further speaks to its success and sustainability, is its ability to embrace the mantra of 'capacity building'. Capacity building is a concept that seems virtually omnipresent today. It has been described as the "process of developing and strengthening the skills, instincts, abilities, processes and resources that organizations and communities need to survive, adapt, and thrive in the fast-changing world". And while there are a range of descriptions as to what capacity building means (see e.g. Chaskin et al., 2001),[3] **In the Lead** encapsulates one of the key characteristics – that is, "people helping people to build skills to change their future". With this in mind, the success of the program and its concept would appear to be readily adaptable to another segment of youth in need of support, coaching, and strength building.

EXTENDING THE IN THE LEAD CONCEPT INTO THE YOUTH JUSTICE SYSTEM

Section 38 (2) (d) of the YCJA states that the courts should consider all reasonable options other than custody when sentencing a young person. The latitude for using alternatives when possible is further strengthened in Part 1 of the Act, which describes the Extrajudicial Measures (EM) option. EM are intended to facilitate the diversion of young offenders or youth-at-risk from the formal proceedings of the justice system. EM are seen as options outside the formal court process which can provide effective and timely responses to youth crime and/or youth-at-risk. The use of this option is at the discretion of the police, and the decision to use this option may be based on one of the following: release, release with informal warning, release with formal warning, or referral to a community-based intervention program. In principle, the provision is designed for low- to moderate-risk young offenders who have committed relatively minor crimes.

Consistent with the principles of diversion and to avoid stigmatization (i.e. labelling theory), the goal is to keep youth out of the judicial system wherever possible. Yet, since the Act also calls for accountability, use of Extrajudicial Measures allows for interventions where a need exists. Furthermore, such measures can also share elements of the restorative justice model, such as coaching and leadership. This is certainly true in the case of Youth Justice Committees, who utilize intervention models designed to promote reconciliation between the young offender and their victim.

MOST YOUNG PERSONS DO NOT WILLINGLY ENGAGE IN DELINQUENT OR ANTI-SOCIAL BEHAVIOUR

In his thought-provoking and innovative approach to examining and responding to young offenders

and youth-at-risk in Canada, Judah Oudshoorn (2015) grounds the focus of his book on the assertion that most young persons do not willingly engage in juvenile or anti-social behaviour, but the risk of their acting out increases exponentially as a result of a possible range of trauma (i.e. the formidable years of adolescent development) in their lives. Therefore, regardless of whether a young person is deemed vulnerable, at risk, or an offender, our justice model and the YCJA includes provisions that allow for (promote) innovative programs that cannot divert young persons away the formal processes of the system but can build on their strengths. This provision has been clearly reflected in the declining number of young persons being placed in detention since the early 1990s. However, most formal options used have involved such routes as community services, reprimands, fine option programs, intensive supervision, etc. (see Miladinovic, 2016).[4] While these options are more commonly used today, probation remains the most common (approx. 57%) alternate disposition to custody.

Given the latitude of the Act and the increasing resource (financial and personal) strain on the formal system, it would appear to be an opportune time to explore the adaptation of a program such as **In the Lead** into the formal youth justice system.

LEADING THE WAY FORWARD

The **In the Lead** program has demonstrated in its evaluation and through the testimonies of many participants and their guardians that it represents a powerful alternative to the more conventional response mechanisms that have been deeply rooted in our system and culture. In addition, the organization and structure of the program has demonstrated a workable operational model that functions efficiently and effectively in today's social, economic, and political times. Although admittedly not a panacea for all vulnerable or at-risk youth, there is a clear rationale and justification to adapt/use the model within the formal response mechanism – Youth Justice System - which continues to serve as the main catch pool for young offenders.

While the initial researchers of **In the Lead** have called for further research into the relative merits and limitations of the program, it is also recognized that certain aspects of the program and its delivery could also be modified. This suggests that, as with many innovative programs across the country, the ideas and objectives of **In the Lead** can be used to develop similar or even new models so long as they stay true to the fundamental objectives – partnership, capacity building, and resiliency development. For example, **In the Lead** has already been successfully delivered in different settings, including a rural community, traditional and outreach schools, as well as in several group homes. ■

1. Cited in W. Hammond & T. Donnon (2012). Evaluation of the "In the Lead" coaching and youth leadership program. Calgary, AB.: Resiliency Initiatives. p. 10.
2. A term paraphrased from the classic work of A. Aichhorn (1951). *The wayward youth.* London: Imago (first published 1925 Verwahrloster Jugend Wien: Internationaler Psychoanalytischer Verlag).
3. R.S. Chaskin, P. Brown, S. Venkatesh, & A. Vidal. (2001). *Building community capacity.* Boca Raton, Fl.: Taylor and Francis.
4. Miladinovic, Z. (2016). Youth court statistics in Canada, 2014/2015. Ottawa: Statistics Canada. Retrieved from www.statcan.gc.ca/pub/85-002-x/2016001/article/14656-eng.htm

RÉSUMÉ

'One for all and all for one': An innovative breakthrough for youth justice and vulnerable youth

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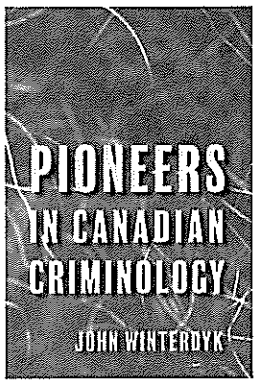
Cet article innovant porte sur la façon dont un programme de Calgary, **In the Lead**, a été conçu pour aider des adolescents vulnérables à retrouver le bon chemin. Il pourrait facilement s'adapter au système de justice criminelle. Winterdyk et Blair soulignent que ce programme de leadership et de développement de caractère basé sur la résilience a été développé et mis en place par la Calgary Youth Justice Society (CYJS). Il fonctionne sur la prémisse que la plupart des jeunes n'adoptent pas nécessairement de plein gré un comportement juvénile ou antisocial, cependant, le risque d'agissements violents augmente de façon exponentielle à la suite d'expériences traumatisantes qui peuvent survenir durant l'adolescence, des années particulièrement difficiles. En mettant l'accent sur le renforcement des habiletés des jeunes, le modèle **In the Lead** répond aux besoins de plusieurs jeunes contrevenants. Le programme est reconnu comme un modèle de réussite, il présente une grande adaptabilité et il convient parfaitement aux mesures extrajudiciaires prévues dans la *Loi sur le système de justice pénale pour les adolescents* (LSJPA). De ce fait, les auteurs recommandent de lancer un programme basé sur **In the Lead** dans l'ensemble du milieu canadien de justice pénale pour les adolescents.

Panorama sur l'histoire de la criminologie au Canada

Article avec une recension d'un livre de John Winterdyk PhD —*Pioneers in Canadian Criminology* (2017). Oakville, ON : Rock Mill's Press. 2017.

ANDRÉ NORMANDEAU
André Normandeau est criminologue et professeur à Université de Montréal. Il est le directeur honoraire de l'École de criminologie ainsi que du Centre international de criminologie comparée (CICC) de l'Université de Montréal. Il est l'auteur de plusieurs livres dont celui sur "Une vision de l'avenir de la police au Canada / Les défis des années 2000", celui sur "Une police professionnelle de type communautaire" et celui sur "Le vol à main armée". Il est également professeur invité annuellement aux États-Unis et en Europe et co-directeur des recensions de livres pour la RCCJP (Ottawa et Toronto) et pour la RSCDPC (Paris).

Le criminologue André Normandeau fournit ici un compte rendu du livre du professeur John Winterdyk, Pioneers in Canadian Criminology, paru en 2017, qui rend hommage aux pionniers du domaine de la criminologie au Canada. Professeur émérite de l'Université de Montréal (Québec), l'établissement reconnu dans ce livre comme ayant fondé la première École de criminologie en 1960, André Normandeau infuse de réflexions personnelles son analyse de certains aspects du livre de John Winterdyk. Il constate que Pioneers in Canadian Criminology intéressera vivement les lecteurs par sa spécificité.



La "Revue canadienne de criminologie et de justice pénale" (RCCJP) existe depuis 1958. Le Bulletin "Justice-Actualités" existe depuis 1984. Les deux sont produits par l'Association canadienne de justice pénale (ACJP), dont le siège social est à Ottawa. Un jour, il faudra bien écrire l'histoire de la criminologie telle que vue par ces deux publications fort importantes pour les Canadiens. Toutefois, en attendant, voici qu'une publication récente relativement 'unique' nous permet de faire le point et de tracer le bilan de cette histoire grâce au nouveau livre de John Winterdyk: *Pioneers in Canadian Criminology* (Oakville et Toronto, Rock's Mills Press, 2017, 293 pages). Je voudrais donc de façon succincte souligner à nos lecteurs l'intérêt de cette publication.

Près de 50 ans maintenant, soit en 1971, Hermann Mannheim, un "criminologue" britannique d'origine allemande bien connu à l'époque, avait publié un "Pioneers in Criminology" relativement volumineux et fort important (New York, Patterson Press, 503 pages) qui a contribué à consolider une jeune discipline universitaire, la "criminologie". Ce livre collectif traçait alors le portrait biographique professionnel de 23 criminologues (au sens large du terme), en particulier d'auteurs tels

que: l'Italien Cesare Beccaria (1738-1794) et son fameux "Des délits et des peines" (1764)) ainsi que le Britannique Jeremy Bentham (1748-1832) et sa célèbre prison Le Panopticon (1811), en passant par quatre (4) auteurs français: Arnould Bonneville de Marsangy (1802-1894), Charles Lucas (1803-1884), Gabriel Tarde (1843-1904) et Émile Durkheim (1858-1917). Évidemment, les trois Italiens qui ont créé le terme même de "criminologie", Cesare Lombroso (1835-1909), Raffaele Garofalo (1852-1934) et Enrico Ferri (1856-1929) apparaissaient parmi ces 23 portraits. On se souviendra que Marsangy a été l'un des principaux instigateurs du nouveau système de la "libération conditionnelle"; que Lucas a été l'un des premiers juristes français au XIX[e] siècle à prendre position de façon franche et nette contre la "peine de mort" et pour une réforme profonde de la "prison"; que Tarde a énoncé les lois de "l'imitation criminelle" et que Durkheim a développé la théorie de la "normalité du crime".

Or, aucun Canadien du domaine de la criminologie (de nouveau au sens large du terme) n'avait été jugé digne à l'époque d'être retenu dans le livre de Mannheim pour une telle biographie professionnelle. D'ailleurs, seulement 4 Américains sur les 23 pionniers y apparaissaient. Ce qui peut se comprendre et même se justifier car le livre de Mannheim portait sur la première véritable période historique de la criminologie, celle du XIX[e] siècle, une période essentiellement européenne. En conséquence, le livre de John Winterdyk que nous recensons par la présente permet de tracer le portrait d'une quinzaine (15) de criminologues du Canada, autant francophones qu'anglophones, mais tous des pionniers du XX[e] siècle, puisque la criminologie canadienne émerge seulement au XX[e] siècle. Un rappel utile du contexte scientifique de la criminologie en Amérique du Nord est ici de mise et ce contexte est reflété très clairement dans le livre de Winterdyk. En effet, cette discipline universitaire a été créée il y a plus d'un siècle à l'Université de Chicago (1910). Par la suite, l'Université de la Californie à Berkeley et San Francisco (1920), l'Université de la Pennsylvanie à Philadelphie (1950), où j'ai fait moi-même mes études supérieures, et l'Université de New York à Albany (1960) ont été les pionnières américaines. L'expansion des années 70 a été phénoménale. Présentement, 20 universités américaines offrent le doctorat en criminologie, 55 une maîtrise et plus de 102 un baccalauréat ("Bachelor's"), l'équivalent de la Licence française.

Mentionnons qu'une fois sur deux le "Department of Criminology / Département de criminologie" porte plutôt le nom de "Department of Criminal Justice / Département de justice pénale". Le terme "School of Criminology / École de criminologie" est également largement utilisé par ailleurs sans que ça change en général quoi que ce soit au contenu réel de la formation. Toutefois, si le terme choisi est celui de "justice pénale", il signifie habituellement que la formation est un peu plus "appliquée" alors que le terme "criminologie" indique une plus grande formation "théorique et empirique". Au Canada, 6 universités offrent le doctorat, 14 la maîtrise et 21 le baccalauréat en "justice pénale" ou en "criminologie". La première École universitaire de criminologie au Canada a été créée à l'Université de Montréal en 1960 par le Professeur Denis Szabo, d'origine hongroise, diplômé de l'Université de Louvain en Belgique. L'Université de Montréal, l'université francophone le plus importante en Amérique du Nord (75,000 étudiants), est depuis ce temps l'une des six principales universités canadiennes en la matière, avec les universités d'Ottawa, de Toronto, de Calgary, d'Edmonton et de Simon Fraser à Vancouver, dont les programmes ont été créés "après" Montréal. Ces six universités offrent un programme complet (doctorat, maîtrise et baccalauréat) en "justice pénale" ou en "criminologie". Contrairement à la France et à plusieurs autres pays, la définition de la criminologie au Canada et aux États-Unis est relativement stable depuis un siècle.

Un consensus nord-américain existe à ce sujet. Il pourrait être défini comme ceci: *La criminologie est une discipline universitaire qui étudie le phénomène criminel, qui vise à trouver des solutions pour prévenir la criminalité et qui essaie d'améliorer la qualité du travail du monde de la police, des tribunaux pénaux, des prisons et des solutions de rechange à la prison, autant au niveau des adultes criminels, des jeunes délinquants et, fort important depuis la dernière décennie, des victimes d'actes criminels.* Cette étude est "interdisciplinaire", sous l'éclairage principal du droit pénal, de la sociologie et de la psychologie, et, à l'occasion, de d'autres disciplines, telles la science politique, l'anthropologie, le service social, la biologie et la

médecine (psychiatrie) ainsi que l'administration publique ...

De plus, depuis le milieu du XX[e] siècle, la criminologie en Amérique du Nord est devenue une véritable "profession". Un diplôme en criminologie débouche sur le marché du travail. Les secteurs dans lesquels travaillent les criminologues sont étonnamment diversifiés et nombreux: probation et travail communautaire ("travail d'intérêt général", en France et en Europe), sursis et mise à l'épreuve, surveillance électronique, prison, maison de transition et libération conditionnelle, centres de protection de l'enfance et de la jeunesse, centres d'accueil et de réadaptation pour les jeunes délinquants ("prison pour les mineurs"), centres d'aide pour les toxicomanes, centre d'aide pour les femmes et les enfants violentés ainsi que pour l'ensemble des victimes d'actes criminels, services de police, prévention du crime, ministère de la Justice, de la Sécurité publique (appelé de l'Intérieur en France et en Europe), de la Santé et des Services sociaux... Dans tous ces milieux, les criminologues déploient une activité aux facettes multiples: l'intervention clinique, la gestion de programmes, l'animation, la consultation, la recherche, l'enseignement... La liste des cours offerts de façon typique dans les Départements et les Écoles de criminologie (ou de justice pénale...) au Canada, et même aux Etats-Unis, reflétée dans le livre de John Winterdyk, est d'ailleurs indicative de ces intérêts.

Mentionnons que ces enseignements sont accompagnés de stages pratiques dans tous les milieux de la criminologie appliquée, que ce soit la police, le tribunal, la prison, les centres d'aide pour les ex-délinquants ou les victimes ... Un étudiant peut ainsi faire un stage pratique d'un mois dans un service de police, puis de trois mois en prison, puis de quelques mois dans un centre d'aide pour femmes et enfants violentés.

Le livre de John Winterdyk identifie les criminologues canadiens qui dans tous ces secteurs d'activité ont fait leurs marques autant au niveau proprement intellectuel (théorie et recherche empirique) qu'au niveau de leurs contributions à améliorer certaines pratiques. Parmi ceux-ci, mentionnons les chapitres biographiques sur Denis Szabo, le "fondateur" à Montréal, né en 1929 et toujours actif à sa manière; sur le regretté Jean-Paul Brodeur (U-Montréal), décédé en 2010 et qui a travaillé à plusieurs reprises avec des équipes de l'Institut national des hautes études de la sécurité et de la justice (INHESJ-Paris); sur André Normandeau (U-Montréal / Excusez la vantardise...), un spécialiste en matière d'évaluation des services policiers et "correctionnels" (prison et alternatives); sur Marc LeBlanc (U-Montréal), un grand spécialiste des questions de délinquance juvénile qui a fait les recherches probablement les plus importantes aux confins de la théorie et de la pratique dans ce secteur; sur Irvin Waller (U-Ottawa), un criminologue qui a toujours collaboré de près (et encore aujourd'hui) avec les services de police pour développer des programmes efficaces de prévention du crime; sur Tadeusz Grygier (U-Ottawa), le "fondateur" à Ottawa; sur Ezzat Fattah (U-Simon Fraser à Vancouver) qui a été et est toujours le plus grand spécialiste de la victimologie au niveau international; sur Patricia et Paul Brantingham (U-Simon Fraser à Vancouver) qui ont travaillé de façon fort originale sur les problèmes de prévention situationnelle du crime; sur Anthony Doob (U-Toronto), un maître de la recherche empirique sur le "sentencing", au niveau de la loi et des tribunaux; sur Richard Ericson (U-Toronto), le grand penseur canadien sur la "déviance"; sur Gwynne Nettler (U-Alberta), un théoricien de l'explication du crime; sur Jim Hackler (U-Alberta), un expert de la justice des mineurs.

Mentionnons également les deux chapitres fort importants de Jo-Anne Wemmers et Arlène Gaudreault (U-Montréal) sur le développement "magistral" de la victimologie au Québec, autant aux niveaux théoriques que pratiques, et la reconnaissance fort méritée du rôle vraiment historique de la regrettée pionnière Micheline Baril (U-Montréal) à ce sujet. Trois (3) "bémols", toutefois. A - Le chapitre prévu sur le criminologue Maurice Cusson (U-Montréal) n'a pu être complété faute de fonds de traduction, ce qui est très dommage, compte tenu qu'il s'agit de l'auteur le plus prolifique de l'histoire de la criminologie au Canada avec une vingtaine (20) de livres, dont plusieurs sur la sécurité intérieure et sur la prévention situationnelle du crime. Ses travaux sont mentionnés ici et là dans le livre, mais cela ne rend vraiment pas justice à cet auteur qui a toujours eu le souci d'un équilibre de bon aloi entre la théorie "et" la pratique. B - D'autres criminologues émérites canadiens français auraient aussi mérité une

biographie professionnelle, tels que: Marie-Andrée Bertrand, Marcel Fréchette, Pierre Landreville, Guy Lemire, Jean Trépanier... D'autres criminologues canadiens anglais également, dont les noms sont heureusement au moins mentionnés dans le livre ici et là. Pour diverses raisons, indépendantes de la volonté de l'auteur, un chapitre biographique sur ces criminologues n'a pas pu être écrit. Dommage ! C - Un chapitre substantiel, déjà préparé en français, a également été mis de côté faute de fonds de traduction. Il s'agit de l'article de Jean Poupart (U-Montréal) sur le développement intellectuel historique de la criminologie à Montréal de 1960 à 2015. Si intéressé, l'article dans sa version française originale est disponible en communiquant avec l'auteur, Jean Poupart: jean.poupart@umontreal.ca.

Tour compte fait, lorsque nous regardons l'histoire de la criminologie au Canada telle que décrite dans ce livre de John Winterdyk, sans flatterie inutile mais sans fausse modestie non plus, nous pouvons affirmer que le bilan est fort positif au chapitre de l'évolution des opinions, des attitudes et des mentalités de la population par rapport au phénomène criminel. La présence des criminologues a permis d'élargir "le corridor de la tolérance" et de contribuer au développement d'une "profession de criminologue" dûment reconnue par les autorités publiques. Une profession qui a trouvé, à mon avis et de l'avis de tous les témoignages que l'on retrouve dans ce livre, un "juste équilibre" entre la protection de la société et la réinsertion sociale du délinquant. Une profession respectée par les ministres de la Justice et de la Sécurité publique, par les autres professionnels de la justice ... et par les journalistes. En effet, les criminologues nord-américains sont souvent interviewés par des journalistes qui ont confiance aux opinions professionnelles éclairées de ces derniers. L'opinion publique en a été marquée, que ce soit depuis 1910 à Chicago ou depuis 1960 à Montréal, et, évidemment, ailleurs sur tout le continent. ■

ABSTRACT

Panorama sur l'histoire de la criminologie au Canada

ANDRÉ NORMANDEAU,
Criminologist, Université de Montréal Professor Emeritus

This article by criminologist Professor Emeritus André Normandeau, contains a succinct review of a 2017 book by John Winterdyk (PhD)—*Pioneers in Canadian Criminology* celebrating the pioneers of the field of criminology in Canada. Normandeau is Professor Emeritus at the *Université de Montréal* (Montréal, Québec), the university highlighted in the book as having created the very first School of Criminology—in 1960. Emphasizing the uniqueness of Winterdyk's *Pioneers in Canadian Criminology* and illustrating certain aspects of it in detail along with his own reflections, he notes that the book will be of great interest to readers.

Wilful promotion of hatred

FRANÇOIS BOILLAT-MADFOUNY
Graduate Student, Criminal Law
CCJA Intern (Summer 2017)

Francois Boillat-Madfouny provides an overview of Canada's hate speech law by focusing on s. 319(2) of the Criminal Code that criminalizes the wilful promotion of hatred. He explores how this offense has been applied and framed in Canadian jurisprudence, and why it is so difficult to prosecute. The author explains how the offender must have communicated statements specifically aimed at stimulating hatred against an identifiable group in a visible and public manner, and that he or she specifically intended to promote hatred in so doing. With the reach of social media widening and its platforms becoming increasingly popular for spreading hatred, Boillat-Madfouny warns that tensions related to free speech and the criminalization of hate speech will increasingly be the subject of debate.

Given our current media environment and considering how social media are increasingly used as efficient platforms through which hatred can be spread about specific groups and individuals, we must ask ourselves the following question: when is it appropriate and necessary for the State to limit free speech? It is in this context that I was compelled to address a very specific offense in the *Canadian Criminal Code (Crim. C.)*: the wilful promotion of hatred[1]. Even though there are very few decisions in Canadian criminal law that have had to deal with s. 319(2) *Crim. C.*, I believe it may come to be used more frequently as social media's sphere of influence grows. This short article's sole purpose is hence to provide a brief overview of how this offense works and how it has been applied and framed in Canadian jurisprudence.

ESSENTIAL ELEMENTS OF THE OFFENCE OF WILFULLY PROMOTING HATRED

Section 319(2) of the *Crim. C.* states the following: "(2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or (b) an offence punishable on summary conviction."

This offense, the constitutionality of which has been tested and confirmed[2], requires firstly that the prosecution prove the accused has "**communicated statements**". These include "communicating by telephone, broadcasting or other audible or visible means"[3], as well as on the Internet through platforms such as Facebook or Twitter[4]. This first element may seem trivial, yet it can change the outcome of a case. For instance, in *R. v. Elms*, even though the court had concluded that the accused had the required *mens rea* of s. 319(2)[5], he was ultimately acquitted. Indeed, the judge concluded that offering to sell certain hateful documents could not be equated to "communicating statements" under s. 319(2)[6].

Secondly, the prosecution must prove that the communicated statements were not part of a "**private conversation**". The notion of what is private or not has been somewhat defined through jurisprudence. In *R. v. Ahenakew*, the Saskatchewan Queen's Bench explains that "a private conversation is a conversation not open to, or intended for, the

public" and that "the number of persons present is irrelevant to the determination of whether a conversation is private"[7]. The Court also adds that "whether or not the conversation was private is to be determined at the time it commenced, not when it ended"[8]. In *R. v. Keegstra*, the Supreme Court of Canada, after comparing s. 319(2) with s. 319(1)[9], clarifies that "private conversations taking place in public areas are not prohibited"[10].

How do these concepts apply to statements communicated on the Internet, through social media for instance? We might initially conclude that since anyone can have access to the web, all such communicated statements are not private. Indeed, when communicated statements are "wide open and accessible to anyone who has the technology and chooses to look"[11], arguing that they are private seems unfeasible. Yet, the security and privacy settings with which an individual uses the Internet may have an impact. Here's how British Columbia's Supreme Court frames the issue:

> "It is possible within the present state of technology and software to create levels of protection and security that restrict access to certain areas of computers and/or websites. It is not difficult to conceive of precautions being taken which restrict access and bring an individual within a level of security which would potentially allow a person to consider his communications to be private."[12]

Hence, determining if a statement communicated on the web constitutes anything more than a private conversation may not be as easy as one might think.

Thirdly, the prosecution must prove that the accused wilfully promoted hatred against an "**identifiable group**", i.e. any section of the public (and not a single individual[13]) distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability"[14]. For instance, in *R. v. Kymowski*, the Supreme Court of Canada asked itself "if the Crown had proved beyond a reasonable doubt that the respondents made some or all of the statements alleged in the information and whether the statements made, as a matter of fact, promoted hatred <u>of the Roma</u>"[15] (my emphasis). And to do so, courts must not limit themselves to the content of the communicated statements but must also consider "the totality of the evidence and draw the appropriate inferences"[16].

In addition, it must be proven that by communicating statements, the accused wilfully promoted "**hatred**". The Canadian Supreme Court defines hatred as "an emotion of an intense and extreme nature that is clearly associated with vilification and detestation [...] and that, if exercised against members of an identifiable group, implies that those individuals are to be despised, scorned, denied respect and made subject to ill-treatment on the basis of group affiliation"[17]. Hence, the word "hatred" is strong, and "in determining whether the communication expressed hatred, the court looks at the understanding of a reasonable person in the context"[18]. Interestingly, it is not necessary for a communicated statement to have *effectively* caused hatred—especially considering how difficult it is to establish a causal link between a communicated statement and hatred of an identifiable group[19].

Finally, the prosecution must prove the *mens rea* of the offense, i.e. that the accused "**wilfully promoted**" hatred. For the Supreme Court of Canada,

> "the mental element is satisfied only where an accused subjectively desires the promotion of hatred or foresees such a consequence as certain or substantially certain to result from an act done in order to achieve some other purpose"[20].

By including the word "wilfully" in s. 319(2), Parliament succeeded in imposing a high burden of proof on the prosecution[21]. The *mens rea* of the offense implies a subjective element of intent[22] that goes beyond derogatory remarks or inappropriate jokes[23]. Willfully promoting hatred goes beyond mere encouragement[24]. It is not sufficient that the accused intended "to insult, provoke, disgust, or outrage the community"[25]. More so, as surprising as it may be, the promotion of *racism* is not criminalized. Indeed, as aptly explained by a Nova Scotian court,

> "the promotion of racism, anti-Semitism or homophobia to name only three examples, as outrageously offensive as they are to any right thinking person, are not in themselves criminal acts. [...] What is criminal is the promotion of <u>hatred</u>." (my emphasis)[26]

Section 319(2) does not criminalize "acts motivated by hate or the outright expression of hatred"[27] (my emphasis). An accused guilty under s. 319(2) is not guilty of having inhumane or disgusting opinions, even if, for instance, his statements advocated that the Jewish Holocaust of World War II helped "get rid of a disease" and "clean up the world"[28]. Rather, the prosecution must prove the wilful promotion of hatred, i.e. that "the hate-monger intended or foresaw as substantially certain a direct and active stimulation of hatred against an identifiable group"[29].

CONCLUSION

As I've previously said, the prosecution's burden of proof for convicting an individual accused under 319(2) *Crim. C.* is high, especially when it comes to proving the *mens rea* of the offense[30]. As social media develops further, the power of influence of single individuals will expand, and one might wonder if the State's burden is *too* high, especially given the increasing polarization of our societies. On the other hand, free speech is such an essential element of a people's ability to self-govern that we should strongly avoid criminalizing speech, except when absolutely necessary. I am convinced that this tension between free speech and the criminalization of hate speech will increasingly be the subject of debate and I hope that this short article has clarified certain aspects of what constitutes wilful promotion of hatred under s. 319(2) *Crim. C.* ■

1. The wilful promotion of hatred is not the only offense criminalizing certain forms of speech. The *Canadian Criminal Code* also criminalizes the advocacy of genocide (s. 318 *Crim. C.*), as well as the public incitement of hatred (s. 319(1) *Crim. C.*).

2. For cases on the constitutionality of s. 319(2) *Crim. C.*, see *R. v. Keegstra*, [1990] 3 S.C.R. 697, *R. v. Andrews*, [1988] O.J. No. 1222 (C.A.) and *R. v. Topham*, 2017 BCSC 259. The main argument against its constitutionality was that the offense inappropriately limits the right to free speech protected by s. 2(a) of the *Canadian Charter of Human Rights*.

3. *Crim. C.*, s. 319(7).

4. *R. v. Noble*, 2008 BCSC 215, par. 37-38; *R. v. Tremaine*, 2011 SKPC 47, par. 14. See also : *R. v. Bhar*, 2006 ABPC 360, par. 82.

5. We will later explore the *mens rea* of this offense.

6. *R. v. Elms*, 82 O.R. (3d) 415 (C.A.), par. 22-23.

7. *R. v. Ahenakew*, 2006 SKQB 272, par. 18. In this decision, the Court had to determine if a conversation between the accused and a journalist was private or not.

8. *Id.*, 2006 SKQB 272, par. 20.

9. *Crim. C.*, s. 319 (1):
"Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of
(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
(b) an offence punishable on summary conviction."

10. *R. v. Keegstra*, [1990] 3 S.C.R. 697, par. 107.

11. *R. v. Noble*, [2008] B.C.J. No. 294, par. 38; *R. v. Tremaine*, 2011 SKPC 47, par. 14. See also *Halsbury's Laws of Canada* - Technology and Internet (2016 Reissue), Dr. Sunny Handa (Contributor), VI. Improper Use of Technology (Civil and Criminal)/Crime/Offences Against the Person and Reputation/ Hate Propaganda, HTE-167 Offence.

12. *R. v. Noble*, 2008 BCSC 215, par. 37. In this case, the court concludes that since no security or privacy precautions were taken, the content of the communicated statements were accessible to all, and hence could not be considered to be part of a private conversation (par. 38).

13. *R. v. Keegstra*, [1990] 3 S.C.R. 697, par. 115.

14. *Crim. C.*, s. 318(4)'s definition of "identifiable group" is applicable to s. 319(2) *Crim. C.* (See s. 319(7) *in limine Crim. C.* and *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, par. 100).

15. *R. v. Krymowski*, 2005 SCC 7, par. 18.

16. *Id.*, 2005 SCC 7, par. 19.

17. *R. v. Keegstra*, [1990] 3 S.C.R. 697, par. 116.

18. *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, par. 103.

19. *Id.*, par. 102; R. v. A.B., 2012 NSPC 31, par. 21. However, this is not perfectly clear. Indeed, in *R. v. Krymowski*, 2005 SCC 7, it has rather been said that the crown has to prove "whether the statements made, as a matter of fact, promoted hatred of the Roma" (my emphasis) (par. 18).

20. *R. v. Keegstra*, [1990] 3 S.C.R. 697, par. 111.

21. *R. v. A.B.*, 2012 NSPC 31, par. 15.

22. *Id.*, par. 13:
"The presence of the word "willfully" in subsection (2) is significant in that it requires that there be a subjective element of intent. The person must have intended that the statements as communicated, promote hatred. There must be either a conscious purpose for the promotion of hatred or the person must have foreseen that the promotion of hatred was almost certain to result."
See also *R. v. Bhar*, 2006 ABPC 360, par. 102.

23. *R. c. Castonguay*, 2013 QCCQ 4286, par. 26.

24. *R. v. A.B.*, 2012 NSPC 31, par. 20; *Halsbury's Laws of Canada* - Religion (Ginn) XIII. CRIMINAL LAW1. Criminal Offences (7) Public Incitement or Promotion of Hatred.

25. *R. v. A.B.*, 2012 NSPC 31, par. 22.

26. *Id.*, par. 18.

27. *Id.*, par. 23.

28. *R. v. Ahenakew*, 2009 SKPC 10, par. 30.

29. *R. v. Keegstra*, [1990] 3 S.C.R. 697, par. 107.

30. For more decisions relating to the *mens rea* of s. 319(2) *Crim. C.*, see: *R. v. Ahenakew*, 2009 SKPC 10, par. 38-39; *R. v. Brazau*, [2014] O.J. No. 1117 (C.J.), par. 66; *R. v. Safadi*, [1993] P.E.I.J. No. 79 (S.C.); *R. v. Mackenzie*, 2016 ABPC 173, par. 39; *R. c. Castonguay*, 2013 QCCQ 4286, par. 22-23.

Fomentation volontaire de haine

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Stagiaire ACJP (été 2017)

François Boillat-Madfouny offre un aperçu du droit canadien relatif à la propagande haineuse, en abordant spécifiquement l'infraction de fomenter volontairement la haine (Code criminel.cr., art. 319(2)). Il explore comment cette infraction a été appliquée et encadrée dans la jurisprudence canadienne, et pourquoi elle est si difficile à prouver. L'auteur note que l'accusé doit avoir fait des communications dans le but spécifique de stimuler la haine contre un groupe identifiable d'une manière ouverte et accessible, avec l'intention spécifique de fomenter la haine. Alors que le pouvoir d'influence des réseaux sociaux croît et que leur utilisation à des fins de propagande haineuse devient de plus en plus populaire, Boillat-Madfouny note que la tension entre le droit à la liberté d'expression et la criminalisation de certaines formes d'expression fera de plus en plus l'objet de débats sociétaux.

Dans un contexte médiatique de plus en plus complexe et considérant l'utilisation grandissante des réseaux sociaux pour tenir des propos haineux à l'égard de certains groupes ou individus, une question se pose: jusqu'où le droit à la liberté d'expression s'étend-il et dans quelles circonstances est-il opportun pour l'État de le limiter? C'est en me posant cette question qu'il m'est apparu pertinent de dresser l'état du droit relatif à une infraction très particulière en droit criminel canadien, soit celle de fomenter volontairement la haine, codifiée au paragraphe 319(2) du *Code criminel (C.cr.)*[1]. Ce court article cherchera à brièvement dresser un portrait de l'état du droit relatif à cette infraction qui, malgré avoir peu fait l'objet de jurisprudence en droit canadien, sera, à mon avis, de plus en plus utilisée alors que la puissance d'influence qu'offrent les médias sociaux ne cesse de croître.

LES ÉLÉMENTS ESSENTIELS DE L'INFRACTION DE FOMENTER VOLONTAIREMENT LA HAINE

Le paragraphe 319(2) du *C.cr.* se décline comme suit :

« (2) Fomenter volontairement la haine — Quiconque, par la communication de déclarations autrement que dans une conversation privée, fomente volontairement la haine contre un groupe identifiable est coupable :

a) soit d'un acte criminel et passible d'un emprisonnement maximal de deux ans;
b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire. »

Cette infraction, dont la constitutionnalité a été testée et confirmée[2], exige donc tout d'abord qu'une personne ait fait une « **communication** » au sens du paragraphe 319(7) *C.cr.*, c.-à-d. « par téléphone, radiodiffusion, ou autres moyens de communication visuelle ou sonore »[3]. Une communication via l'Internet, sur des plateformes numériques telles que Facebook ou Twitter, est également considérée comme telle[4]. Bien qu'il puisse paraître banal, ce premier élément peut toutefois changer l'issue d'un procès. Par exemple, dans l'affaire *R. v. Elms*, même si le tribunal était arrivé à la conclusion que l'accusé avait l'esprit coupable nécessaire de l'infraction de 319(2) *C.cr.*[5], il a ultimement acquitté l'accusé puisque ce dernier, en *offrant de vendre* des documents haineux, n'avait pas *communiqué* de déclaration au sens de 319(2) *C.cr*[6].

Par la suite, la poursuite doit prouver que la communication était « **autrement que dans une conversation privée** ». L'étendue de ce qui est considéré comme tel a été quelque peu développée

en jurisprudence. Dans l'affaire *R. v. Ahenakew*, le tribunal estime qu'une conversation privée en est une qui n'est pas ouverte au, ou destinée au, public, avant d'ajouter que le nombre de personnes présentes est impertinent quant à déterminer si la conversation était privée[7]. Il précise également que cette détermination devait s'intéresser au moment où la conversation a débuté, et non lorsqu'elle s'est terminée[8]. Dans l'affaire *R. c. Keegstra*[9], la Cour suprême, en comparant l'infraction de fomenter volontairement la haine à celle d'inciter publiquement à la haine[10], estime que « les conversations privées dans des endroits publics ne sont pas frappées d'interdiction »[11].

Cela étant dit, comment les tribunaux ont-ils évalué cette question dans le contexte de communications faites en ligne, notamment par l'entremise de réseaux sociaux? À première vue, on pourrait conclure que puisque n'importe qui peut accéder aux données publiées sur Internet, toute communication qui s'y trouve perd son caractère privé. En effet, il ne semble pas y avoir de doute à l'effet que des communications ou des publications faites en ligne, ouvertes et accessibles à quiconque avait la technologie, ne peuvent être considérées comme des communications privées[12]. Toutefois, les modalités de sécurité et de vie privée avec lesquelles une personne navigue et publie en ligne peuvent mettre en doute cette supposition. À cet effet, la Cour supérieure de Colombie-Britannique s'est exprimée ainsi dans l'affaire *R. v. Noble*[13]:

> « It is possible within the present state of technology and software to create levels of protection and security that restrict access to certain areas of computers and/or websites. It is not difficult to conceive of precautions being taken which restrict access and bring an individual within a level of security which would potentially allow a person to consider his communications to be private. »[14]

Bref, déterminer si une communication faite en ligne était autre que dans une conversation privée n'est pas aussi simple que l'on pourrait croire.

Troisièmement, la poursuite doit prouver que l'accusé a, par la communication de déclarations autrement que dans une conversation privée, fomenté volontairement la haine contre un « **groupe identifiable** », c.-à-d. une section du public, et non un seul individu[15], qui « se différencie des autres par la couleur, la race, la religion, l'origine nationale ou ethnique, l'âge, le sexe, l'orientation sexuelle, l'identité ou l'expression de genre ou la déficience mentale ou physique »[16]. Par exemple, dans l'affaire *R. v. Krymowski*, la Cour suprême du Canada s'est demandé « si le ministère public avait prouvé hors de tout doute raisonnable que les intimés avaient fait les déclarations alléguées dans la dénonciation ou certaines d'entre elles et si, effectivement, les déclarations fomentaient la haine contre les Roms »[17] (mon soulignement). Pour ce faire, elle ne s'est pas limitée au seul contenu des propos, mais a considéré la totalité de la preuve et a tiré les inférences appropriées[18].

Quatrièmement, la poursuite doit prouver que l'accusé, par ses déclarations, a volontairement fomenté la « **haine** ». Pour la Cour suprême du Canada, le mot haine « désigne une émotion à la fois intense et extrême qui est clairement associée à la calomnie et à la détestation » et qui implique que les membres du groupe identifiable « doivent être méprisés, dédaignés, maltraités et vilipendés, et ce, à cause de leur appartenance à ce groupe[19] ». La question à savoir si la communication constitue de la haine exige un test objectif, en se demandant quelle compréhension en aurait une personne raisonnable dans le contexte[20]. Par ailleurs, il n'est pas requis que la communication ait *effectivement* causé de la haine, considérant la difficulté « d'établir un lien de causalité entre le message communiqué et la haine contre un groupe identifiable »[21].

Finalement, la poursuite doit prouver la *mens rea* de l'infraction, à savoir que l'accusé « fomentait volontairement » la haine. Pour la Cour suprême du Canada dans l'affaire *R. c. Keegstra*,

> « le sens du mot "volontairement" implique que cet élément moral n'existe que lorsque l'accusé souhaite la fomentation de haine ou prévoit qu'elle résultera certainement ou presque certainement d'un acte accompli en vue d'atteindre un autre but »[22].

L'inclusion du terme « volontairement » au paragraphe 319(2) *C.cr.* laisse entendre que le législateur avait l'intention d'établir un fardeau de preuve élevé quant à l'élément moral de cette infraction[23]. La *mens rea* de l'infraction implique un élément subjectif d'intention[24]. Il ne s'agit pas simplement de quelques commentaires désobligeants ou de farces de mauvais goût[25]. Fomenter la haine va au-delà de l'encouragement[26]. D'ailleurs, il faut bien comprendre que la promotion du racisme, aussi insensée et inopportune qu'elle puise l'être, n'est pas en soi criminelle; c'est la promotion

de la *haine* qui est criminalisée[27]. Le fait d'insulter, de provoquer, de dégoûter ou de soulever l'opprobre de la communauté n'est pas suffisant pour prouver l'esprit coupable de l'accusé[28]. Le paragraphe 319(2) *C.cr.* ne criminalise pas *l'expression* de la haine raciste ou des actes motivés par cette dernière[29]. Un individu accusé de l'infraction prévue à 319(2) *C.cr.* n'est pas accusé d'avoir des opinions inhumaines ou dégoûtantes, même si, par exemple, ces dernières sont à l'effet que l'Holocauste nous a libérés de la maladie que constituent les juifs et a permis de nettoyer le monde[30]. Plutôt, « le fomentateur de la haine doit avoir l'intention d'exciter directement et activement la haine contre un groupe identifiable ou prévoir cette conséquence comme presque certaine doit spécifiquement avoir »[31].

CONCLUSION

Tel qu'avancé précédemment, le fardeau de preuve pour condamner un individu accusé sous le paragraphe 319(2) *C.cr.* est très élevé, surtout pour ce qui est de la preuve de l'intention coupable[32]. Dans un contexte où les réseaux sociaux continuent à se développer et dans lequel le pouvoir d'influence de chaque individu augmente amplement, on peut se demander si le fardeau de preuve ne serait pas *trop* élevé, surtout considérant la polarisation croissante de nos sociétés. D'un autre côté, la liberté d'expression est tellement intégrante à notre capacité d'autogouvernance qu'il est préférable de constamment éviter de criminaliser l'expression, sauf lorsqu'absolument nécessaire. Je suis convaincu que cette tension entre la liberté d'expression et la criminalisation de la propagande haineuse fera de plus en plus l'objet de débats de société et j'espère que cet article aura alors pu dresser un portrait un peu plus clair de l'état du droit relatif à l'infraction de fomenter volontairement la haine. ■

1. L'infraction de fomenter volontairement la haine n'est pas la seule à criminaliser certaines formes d'expressions. Le *Code criminel* canadien interdit également l'encouragement au génocide (*C.cr.*, art. 318) et l'incitation publique à la haine (*C.cr.*, art. 319(1)).

2. Pour de la jurisprudence s'intéressant à la constitutionnalité de l'article 319(2) *C.cr.*, voir *R. c. Keegstra*, [1990] 3 R.C.S. 697, *R. v. Andrews*, [1988] O.J. No. 1222 (C.A.) et *R. v. Topham*, 2017 BCSC 259. Le principal argument soutenant l'inconstitutionnalité de la disposition était à l'effet qu'elle violait le droit à la liberté d'expression protégé au paragraphe 2a) de la *Charte canadienne des droits et libertés*.

3. *C.cr.*, art. 319(2) *in limine*.

4. *R. v. Noble*, 2008 BCSC 215, par. 37-38; *R. v. Tremaine*, 2011 SKPC 47, par. 14. Voir aussi *R. v. Bhar*, 2006 ABPC 360, par. 82.

5. Nous expliquerons ultérieurement l'élément de *mens rea* de l'infraction du paragraphe 319(2) *C.cr.*

6. *R. v. Elms*, 82 O.R. (3d) 415 (C.A.), par. 22-23.

7. *R. v. Ahenakew*, 2006 SKQB 272, par. 18. Dans cette affaire, le tribunal cherchait à déterminer si la conversation que l'accusé a entretenu avec une journaliste était privée ou non au sens de 319(2) *C.cr.*

8. *Id.*, 2006 SKQB 272, par. 20.

9. *R. c. Keegstra*, [1990] 3 R.C.S. 697.

10. *C.cr.*, art. 319(1) :
« Quiconque, par la communication de déclarations en un endroit public, incite à la haine contre un groupe identifiable, lorsqu'une telle incitation est susceptible d'entraîner une violation de la paix, est coupable :
a) soit d'un acte criminel et passible d'un emprisonnement maximal de deux ans;
b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

11. *R. c. Keegstra*, [1990] 3 R.C.S. 697, par. 107.

12. *R. v. Noble*, [2008] B.C.J. No. 294, par. 38; *R. v. Tremaine*, 2011 SKPC 47, par. 14. Voir aussi *Halsbury's Laws of Canada* - Technology and Internet (2016 Reissue), Dr. Sunny Handa (Contributor), VI. Improper Use of Technology (Civil and Criminal)/Crime/Offences Against the Person and Reputation/ Hate Propaganda, HTE-167 Offence

13. *R. v. Noble*, 2008 BCSC 215.

14. *Id.*, par. 37. Dans cette affaire, la cour conclut alors que puisqu'aucune précaution n'a été prise, le contenu était accessible à tous, de sorte que les déclarations en ligne de l'accusé ne pouvaient être considérées des communications privées (par. 38).15. R. v. Krymowski, 2005 SCC 7, par. 18.

15. *R. c. Keegstra*, [1990] 3 R.C.S. 697, par. 115.

16. La définition de « groupe identifiable » du paragraphe 318(4) s'applique à 319(2) C.cr. (Voir C.cr., art. 319(7) *in limine; Mugesera c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, [2005] 2 R.C.S. 100, par. 100).

17. *R. v. Krymowski*, 2005 CSC 7, par. 18.

18. *R. v. Krymowski*, 2005 CSC 7, par. 19.

19. *R. c. Keegstra*, [1990] 3 R.C.S, par. 116.

20. *Mugesera c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, [2005] 2 R.C.S. 100, par. 103.

21. *Mugesera c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, [2005] 2 R.C.S. 100, par. 102; R. v. A.B., 2012 NSPC 31, par. 21. Toutefois, le droit à cet égard n'est pas parfaitement clair. En effet, dans *R. v. Krymowski*, 2005 CSC 7, il a plutôt été dit que la poursuite doit prouver que « effectivement, les déclarations fomentaient la haine contre les Roms » (*R. v. Krymowski*, 2005 CSC 7, par. 18). See also *R. v. Bhar*, 2006 ABPC 360, par. 102.

22. *R. c. Keegstra*, [1990] 3 R.C.S, par. 111.

23. *R. v. A.B.*, 2012 NSPC 31, par. 15.

24. *Id.*, par. 13:
« The presence of the word "willfully" in subsection (2) is significant in that it requires that there be a subjective element of intent. The person must have intended that the statements as communicated, promote hatred. There must be either a conscious purpose for the promotion of hatred or the person must have foreseen that the promotion of hatred was almost certain to result. »
Voir aussi *R. v. Bhar*, 2006 ABPC 360, par. 102.

25. *R. c. Castonguay*, 2013 QCCQ 4286, par. 26.

26. *R. v. A.B.*, 2012 NSPC 31, par. 20; *Halsbury's Laws of Canada* - Religion (Ginn)XIII. CRIMINAL LAW1. Criminal Offences (7) Public Incitement or Promotion of Hatred.

27. *R. v. A.B.*, 2012 NSPC 31, par. 17-18.

28. *Id.*, par. 22.

29. *Id.*, par. 23.

30. *R. v. Ahenakew*, 2009 SKPC 10, par. 30

31. *R. c. Keegstra*, [1990] 3 R.C.S. 69, par. 115

32. Pour d'autres décisions reprenant les principes relatifs à la *mens rea* du paragraphe 319(2) *C.cr.*, voir : *R. v. Ahenakew*, 2009 SKPC 10, par. 38-39; *R. v. Brazau*, [2014] O.J. No. 1117 (C.J.), par. 66; *R. v. Safadi*, [1993] P.E.I.J. No. 79 (S.C.); *R. v. Mackenzie*, 2016 ABPC 173, par. 39; *R. c. Castonguay*, 2013 QCCQ 4286, par. 22-23.

Highlights of the 2017 National Restorative Justice Symposium:

GLOBAL INNOVATION-LOCAL (R)EVOLUTION

STEFAN HORODECKYJ
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Toronto lawyer Stefan Horodeckyj offers highlights from the 2017 National Restorative Justice Symposium (NRJS). The event was hosted by the Collaborative Justice Program, in partnership with the Church Council on Justice and Corrections and took place November 19-21, 2017 at the Ottawa Westin. The theme of the conference was Global Innovation-Local (R)Evolution, and the event did have an international feel and appeal, with delegates from New Zealand and England as well as Canada. Presenters offered a variety of definitions of Restorative Justice, with presentations on updated sentencing provisions with Canada's Bill C41, the perspective of the Canadian Bar Association, and New Zealand's Family Group Conferencing model, to name only a few.

"Global Innovation-Local (R)Evolution" was the theme of this year's NRJS, held in Ottawa in November. The Symposium had an international feel and appeal, with presenters and attendees hailing from within Canada and from England and New Zealand. Plenary sessions and workshops offered insights into various Restorative Justice (RJ) practices including successes and challenges. The event was hosted by the Collaborative Justice Program and the Canadian Church Council on Justice and Corrections and held at Ottawa's Westin Hotel.

SOME DEFINITIONS OF RJ OFFERED BY PRESENTERS AT THE 2017 NRJ SYMPOSIUM

RJ is

- ▷ a philosophy
- ▷ a way of thinking
- ▷ a mind-set
- ▷ a lens
- ▷ a process
- ▷ a conceptual framework
- ▷ a way of practice
- ▷ a problem-solving approach
- ▷ a relational approach to crime
- ▷ victim-oriented

A JUDICIAL PERSPECTIVE ON RESTORATIVE JUSTICE

The Honourable Justice Rowe of the Supreme Court of Canada explored the evolution of the statute provisions of Section 718, Purpose of Sentencing, of the Canadian Criminal Code. In 1995 with Bill C-41, which added the following to the Purposes of Sentencing: "to provide reparations for harm done to victims or community; and to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community." These statute provisions are RJ in nature.

Justice Rowe also pointed out that Bill C-41 also modified Section 718.2, Other Sentencing Principles through the addition of restricted use of imprisonment", which means imprisonment is to be used as a last resort and The Court should avail

itself of non-custodial sentencing options wherever appropriate. This legislative provision is clearly founded upon the principles of restorative justice.

As well, Justice Rowe pointed out that such RJ programs as 'healing circles' in an Aboriginal context are an important part of the process for the Indigenous Peoples of Canada.

CANADIAN BAR ASSOCIATION (CBA) PERSPECTIVE

Kerry L. Simmons, Chair of the CBA spoke on behalf of the CBA, stating that it is important to take a holistic view on crime. She also pointed out that healing relationships are important, as the offender is held accountable for the crime committed.

Simmons also remarked on how important it is the Courts to canvass alternative sentences to imprisonment. In that vein, she affirmed the CBA's opposition to mandatory minimum prison sentences. One of the main reasons for this is that it completely restricts the Judge's use of discretion.

Finally, Simmons indicated that CBA supports the Indigenous Peoples of Canada's 94 recommendations in the final report of the Truth and Reconciliation Commission of Canada (2015)

FAMILY GROUP CONFERENCING (FGC) FOR CHILDREN AND YOUTH IN NEW ZEALAND - "PEOPLE-CENTERED JUSTICE"

In 1989, New Zealand (NZ) passed a landmark statute, the Children, Young Persons and Their Families Act, which prescribes a new way of dealing with children and youth and is the cornerstone of New Zealand's Youth Justice System. The Act provides for the care and protection of children as well as their treatment under youth justice. The focus of this law is the best interests of children and youth and it is very clear that arrest and imprisonment interventions are the last resort. This Act mandates that an RJ approach to youth crime should take priority over punitive approaches. The roots of the Family Group Counselling (FGC)/Restorative Justice (RJ) model trace back to traditional Indigenous cultures in which the care and decision-making for children was considered the natural responsibility of the extended family and community as a whole.

New Zealand was first to use the Family Group Conferencing (FGC), an RJ model as to meet the cultural and justice needs of the Maori aboriginal people. It involves discussions amongst the offender, his/her parents, the victim, his/her parents, lawyers, a social worker, and a Maori representative-usually an elder if the offender is Aboriginal. The New Zealand government has earmarked 9 million dollars for RJ programs within its criminal justice system over the next 4 years. This is substantial, considering the population of NZ is approximately 4.7 million. Scientific research studies carried out in 2011 and 2012 produced the following results re Family Group Conferencing (FGC) with children and youth in New Zealand:

- youth offences were decreased by 31%
- recidivism among youth decreased substantially
- offending among the Maori youth was significant reduced
- Victim satisfaction was 80% and higher

RESTORATIVE JUSTICE MODELS USED IN ALBERTA

The main difference between the use of FGC in New Zealand and Alberta, Canada is that the FGC is the primary program in NZ and is prioritized over the classical criminal justice approach. In Alberta, on the other hand, the classical criminal justice system is the primary system with FGC offering a potential alternative if the accused is deemed suitable and agrees to participate. FGC offers a true partnership-engagement process, a collaborative dispute resolution process that empowers families to make decisions regarding the care and protection of children experiencing maltreatment or at risk of neglect or abuse.

SOME FGC VALUES

- Families and children should be informed of the services available to them, and participate in decisions that affect them;
- A child's identity, namely, his/her connection with family, culture, and community should be preserved; and
- Children are entitled to be raised in a stable, loving, nurturing home.

In Alberta, healing circles represent the most common RJ model for Aboriginal offenders and victims. Based on feedback from offenders, victims, family members of the offenders and victims, elders, and other community stakeholders, FGC and healing circles are successful models. It addresses

the harm done, including the cause(s) which led to the crime being committed, responsibilities of parties involved in the conflict, and the resultant needs of the parties.

FIRST NATIONS COURTS (FNC) AND RJ VALUES AND PRINCIPLES IN BRITISH COLUMBIA, CANADA

Over the last decade there has been a movement to create First Nations Courts (FNC) in British Columbia (BC). Currently, however, such Courts are only available to adult Aboriginal offenders and their families—the victim and his/her family are not involved in the process.

The referral mechanism to FNC in British Columbia (BC) is somewhat unstructured and informal. British Columbia's Provincial Court's Chief Judge has the authority to make referrals to FNC, rather than the Attorney General of BC or the Federal Attorney General/Minister of Justice as might be expected.

Several different RJ models/programs fall into the scope of First Nations Courts. All are culturally-sensitive to First Nations peoples and are informal in nature and, whenever possible, involve elders. These are problem-solving Courts, essentially, and include Mental Health Courts, Drug Treatment Courts, and Detoxification programs. The main goals of these RJ models are to provide treatment and support to the offender, to keep him/her out of prison if at all possible and to reintegrate offenders with family and community.

Success of FNC is currently unknown. There is a need for scientific research studies into Do First Nation Courts (FNCs) reduce recidivism? Do FNC reduce incarceration of offenders? What are the real benefits of RJ models and programs for the offender, his/her family and his/her community?

PROBLEM-SOLVING COURTS BASED ON RJ PRINCIPLES

These problem-solving courts are diversion programs for offenders, and the victim is rarely involved in the process. Thus, only partial RJ is practiced in these Courts. A number of specific diversion programs discussed at the Symposium were (a) Drug Treatment Courts in Edmonton, Alberta; (b) Toronto West Courthouse Program; (c) Downtown Community Court in Vancouver, BC.

Common features of Problem-Solving Courts include collaboration through brokering by the judge with other social agencies, treatment providers and supports. They thus take a multidisciplinary approach. Programs offered include drug and alcohol programs, mental health services, life skills training and anger management programs.

CONCLUDING THOUGHTS

Overall, the 2017 National Restorative Justice Symposium, held in November at the Westin Hotel in Ottawa, brought to the fore the fact that Restorative Justice (RJ) is being practiced worldwide with greater regularity than ever before and that scientific research shows RJ practices to be effective in reducing offender recidivism and providing a consistently high level of satisfaction for the victim. Family Group Conferencing (FGC)/ Restorative Justice (RJ) programs that are culturally sensitive are particularly effective, especially with Aboriginal peoples. ■

RÉSUMÉ

Highlights of the 2017 National Restorative Justice Symposium (NRJS): Global Innovation-Local (R)Evolution

STEFAN HORODECKYJ
BA, BEd, JD

L'avocat torontois Stefan Horodeckyj partage les faits saillants du Symposium national sur la justice réparatrice (SNJR) qui s'est tenu du 17 au 19 novembre 2017 à l'hôtel Westin d'Ottawa. Cet événement était organisé par le Programme de justice collaboratrice en partenariat avec le Conseil des églises pour la justice et la criminologie (CEJC) sous le thème Innovation mondiale – (R)évolution locale. En plus des delegues du Canada, l'événement offrait une composante internationale avec ceux de la Nouvelle-Zélande et de l'Angleterre. Les présentateurs ont offert diverses définitions de justice réparatrice, notamment, la perspective de l'Association du barreau canadien sur les nouvelles dispositions concernant la détermination de la peine dans le projet de loi C-41 au Canada; le modèle néo-zélandais de séances de concertation familiale, un modèle qui existe également au Canada; et les cours de justice des Premières Nations en vigueur dans diverses provinces canadiennes.

Human Trafficking in Canada: Structural Problems and At-Risk Populations

CODY HOY
Undergraduate, Bachelor of Arts in Criminal Justice, Department of Economics, Justice, and Policy Studies, Mount Royal University, Calgary, AB.

CODY HOY IS THE WINNER OF THE 2017 MOUNT ROYAL UNIVERSITY (CALGARY, ALBERTA) ANNUAL UNDERGRADUATE STUDENT AWARD
THE CCJA CONGRATULATES MR. HOY ON THIS ARTICLE VERSION OF HIS AWARD-WINNING ESSAY!

Human Trafficking (HT), aka trafficking of persons, is a crime that occurs in all countries including Canada. Since the Palermo Protocol, Canada has passed legislation that targets and attempts to reduce HT; yet, something is hindering an informed response by the Canadian Criminal Justice System. Canadian laws designed to criminalize human trafficking offences are often too narrow in scope and open to misinterpretation and conflation with other offences in Canadian Criminal Code. *Also, the distinct lack of credible national and international statistical data on the subject makes an informed response to HT unlikely, at both the domestic and global level. While certain populations are more at risk of HT, the current disproportional focus on trafficking offenses related to sexual exploitation makes identifying groups at risk of forced labour all the more difficult.*

In the context of the Canadian criminal justice system, human trafficking legislation is a relativity new area of law designed to target and stop the exploitation of people for the benefit of others. Like other countries worldwide, Canada is not immune to human trafficking and has acted to address instances of both domestic and international trafficking in persons (Public Safety Canada, 2012).

The most commonly accepted definition of human trafficking is found within the Palermo Protocol, a United Nations protocol that specifically speaks to the need for international collaboration in reducing instances of trafficking (United Nations, 2000, p. 32). Canada signed on to this protocol in December 2000 and ratified it in May 2002 (Millar & O'Doherty, 2015, p. 29).

Despite well-intentioned actions taken by the government of Canada to reduce and eliminate the occurrence of human trafficking in Canada, there have been issues with its response to the problem. One such issue focuses on the understanding of what human trafficking is and how it differs from human smuggling (Ogrodnik 2010, Public Safety Canada 2012 & United Nations 2008 as cited in Karam, 2016, p. 8). Another such problem concerns issues surrounding the interpretation and application of both the *Canadian Criminal Code* and, to a lesser extent, the *Immigration and Refugee Protection Act* (IRPA) (Kaye & Hastie, 2015, p. 2/4; Roots, 2013, p. 23).

SMUGGLING VS. TRAFFICKING

Human trafficking is differentiated from human smuggling by the presence of both "force, coercion,

HUMAN
TRAFFICKING

fraud, or deception" in the conveyance of a trafficked person to Canada and by sustained interaction between the trafficker and the trafficked person following their arrival (*R v. Ng* as cited in Millar & O'Doherty, 2015, p. 54). Other sources, however, merely make the distinction that human trafficking involves an intent to exploit the individual(s) in transit, whereas smuggling operations do not (Public Safety Canada, 2012 & United Nations, 2008 as cited in Karam, 2016, p. 8).

APPLICABLE CANADIAN LEGISLATION

Since ratifying the Palermo Protocol, Canada has enacted six laws under two different acts that criminalize the various offenses related to human trafficking. As noted above, these two acts are the *Canadian Criminal Code (CCC)* and the *Immigration and Refugee Protection Act (IRPA)*. The *CCC* has five sections directly pertaining to the trafficking of persons: 279.01, 279.011, 279.02, 279.03, and 279.04 (Royal Canadian Mounted Police [RCMP], 2014, p. 4). These sections target the physical act of trafficking, profiting from instances of trafficking, withholding or destroying the identity documents of a trafficked person, and exploitation for labour or other services (Greenspan, Rosenberg, & Henein, 2014, p. 267/268).

While these sections of Canada's *Criminal Code* apply to instances of domestic human trafficking, section 118 of the IRPA criminalizes the trafficking of individuals from another country into Canada (RCMP, 2014, p. 4) via deceit, the use of force, or the threat of force (*Immigration and Refugee Immigration Act*, SC 2001, c. 27, s 118).

PROBLEMS IN LEGISLATION

While the five HT specific sections in the *CCC* are intended to enhance the ability of Canadian law enforcement agencies to combat human trafficking, they have been critiqued in two primary ways. First, Kaye and Hastie have identified that the wording in the *Criminal Code* hinders its applicability with regard to certain types of trafficking, most notably labour trafficking (2015, p. 2). Second, section 279.01's wording is quite similar in nature to procurement offences, arguably leading to a conflation of the two offences (Roots, 2013, p. 30/40; Millar and O'Doherty, 2015, p. 32).

As for *IRPA*, section 118, it is relatively easily interpreted, but is found to be narrow in scope—as it only applies to trafficked non-residents who illegally enter the country and would not readily apply to non-residents who legally enter the country only to end up being trafficked upon arrival (Kaye & Hastie, 2015, p. 4).

OFFICIAL EXTENT AND NATURE OF HUMAN TRAFFICKING IN CANADA

There is limited data on the extent to which human trafficking, of any form, occurs within Canada (Public Safety Canada, 2015, p. 4; Millar, O'Doherty, & Roots, 2017, p. 38). Official data spanning 2005 to July 2016, however, shows 102 HT or HT related court proceedings involving a total of 237 victims and 131 accused convicted (Public Safety Canada, n.d., p. 6). In fact, between 2009 and 2014 alone, a total of 396 victims were identified in police-reported cases of human trafficking (Karam, 2016, p. 3). Of those victims, 93 percent were female, 47 percent were aged 18-24 and 25 percent were under age 18 (Karam, 2016, p. 3). It is even more concerning that of these 396 victims, 91 percent knew their trafficker and 30 percent were physically harmed by their trafficker (Karam, 2016, p. 4).

AT-RISK POPULATIONS

According to available data, victims of domestic human trafficking are primarily trafficked for sexual exploitation, with the majority being female Canadian citizens between the ages of 14 and 22 (Public Safety Canada, 2015, p. 4). As mentioned above, however, it is noteworthy that trafficking for sexual exploitation is not the only type of human trafficking occurring in Canada—trafficking for forced labour also occurs but on a lesser scale (see Public Safety Canada, 2015; British Columbia Ministry of Justice, 2013).

Those most at risk of human trafficking, particularity for the purpose of sexual exploitation, are young persons and persons who engage in prostitution or exotic dancing (RCMP, 2014, p. 14). Also at risk are Aboriginal persons, new Canadians, persons suffering from substance dependencies and other mental health conditions, and those socioeconomically disadvantaged (Public Safety Canada, 2015, p. 4; RCMP, 2014, p. 13-16). Many of these people are lured in with promises of money, relationships, or the provision of drugs—including alcohol (RCMP, 2014, p. 13-16; Public Safety Canada, 2015, p. 4).

CONCLUSION

The issue of human trafficking has garnered considerable attention in recent years and, like many other countries, Canada has undertaken a range of initiatives to address and combat it. The fact

that there have been but a few assessments of the legislative responses to date motivated the research presented in this article, on how well the various initiatives have been working. Although it was by no means an exhaustive study, and only exploratory in nature, my research suggests that Canada's various human trafficking laws are still struggling to gain traction. Conflations of definition and applicability between these laws and others seem to be the cause. These issues have likely been significant contributors to the overall lack of successful prosecutions under this area of the law, particularly in instances of labour trafficking. The lack of successful prosecutions and conflation of offences only serves to highlight the importance of and difficulties inherent in obtaining reliable empirical data illustrating the true extent of human trafficking within Canada. Without a clear picture of who the victims of human trafficking are, we can't know if any potentially identifiable at-risk groups, such as the addition of LGTBQ youth to the identified at-risk populations (Public Safety Canada, n.d., p. 5), have been left out of current preventative measures and initiatives. ■

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RÉSUMÉ

Human Trafficking in Canada: Structural Problems and At-Risk Populations

CODY HOY

MRU BA Student, Winner of the 2017 Mount Royal University Award

La traite des personnes est un crime commis dans tous les pays, dont le Canada. Depuis la Convention de Palerme, le Canada s'est doté de lois afin d'en réduire les proportions. Pourtant, quelque chose semble empêcher le système de justice pénale canadien de réagir de façon éclairée. Les lois canadiennes conçues pour criminaliser les infractions liées à la traite des personnes ont souvent une portée trop limitée et sont sujettes à de mauvaises interprétations et à des amalgames avec d'autres infractions du Code criminel canadien. De plus, le manque évident de données statistiques fiables à l'échelle nationale et internationale sur ce sujet rend peu probable une réaction réfléchie au Canada et à l'étranger. Bien que certaines populations soient plus à risque, l'accent disproportionné mis sur la dimension liée à l'exploitation sexuelle rend d'autant plus difficile le repérage des groupes à risque de se retrouver dans des situations de travail forcé.

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ACJS

GENERAL INFORMATION

ABOUT

The Canadian Criminal Justice Association (CCJA) in conjunction with the International Corrections and Prisons Association (ICPA) and the Correctional Service of Canada (CSC) will be hosting a Pre-Conference Graduate Student Research Symposium on Sunday, October 21, 2018 in Montreal, Quebec, Canada. The symposium is being made possible with the sponsorship of the International Association for Correctional and Forensic Psychology (IACFP) and the Academy of Criminal Justice Sciences (ACJS).

The Symposium aims to profile the most recent North American applied research in the field of corrections. Held prior to the official opening of ICPA's 20th Anniversary Conference, the Symposium will provide opportunity for **graduate student** researchers to share their **research**, to stimulate discussion with other researchers and to attract interest for the importance of evidence-informed correctional policies and practices by world correctional leaders and practitioners attending ICPA.

WHY ATTEND?

The Symposium will focus on the evidence base for various aspects of correctional practice including risk assessment, the effects of the custodial experience, correctional programs and interventions, education, **strategies for promoting correctional staff wellness** and community supervision and reintegration. Given the contemporary prevalence of health issues, including addictions and mental health, and Indigenous over-incarceration, it is expected that these will be covered in workshops as well.

WHO SHOULD ATTEND?

Academics and researchers hoping to learn from results of recent North American research; prison directors and governors who can apply best practices garnered from research; practitioners and senior officials directing correctional policies and programs.

CALL FOR PAPERS & REGISTRATION

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CALL FOR PAPERS

Sessions will be structured along the following four themes:

- Innovation in the assessment of risks/needs and the evaluation of interventions and service delivery models;
- Qualitative and/or quantitative approaches in the measurement of correctional performance and the effects of the custodial experience;
- Research addressing correctional staff wellness; and
- Parole, probation and community supervision models.

We invite presentations from students at the Master and Doctorate levels who have recently completed applied research in any of the areas mentioned above.

Interested presenters are invited to send the following to CCJA (**ccja-acjp@rogers.com**) by June 15, 2018:

- An abstract submission highlighting the focus and findings of the research. Please keep this **concise** and to the point (**no longer than 250 words**);
- A **short** ½ page or less professional biography/resume for the author and any co-authors intending to participate in the presentation.

You can also propose to combine several papers from different speakers into one 1.5-hour workshop. It will, however, be up to the Conference Program Committee to select either one paper or the suggested combination.

REGISTRATION

Registration will be free of charge to student presenters as well as all delegates registered for the ICPA conference. For the student presenters at the Symposium, the ICPA has kindly agreed to waive the usual Conference registration fee for attendance at the ICPA Conference proper.

For more information contact CCJA at **ccja-acjp@rogers.com** call **613-725-3715**, or visit the website at **www.ccja-acjp.ca**

SCHOLARSHIP, VENUE & ACCOMMODATION

SCHOLARSHIP OPPORTUNITIES

The IACFP (2) and the ACJS (1) have agreed to offer a number of scholarships to defray the costs for travel, accommodation and subsistence for student presenters from across North America. These 'travel' scholarships **(up to $2,500)** will be awarded to those student research submissions that are considered most excellent, as determined by a senior researcher peer-review committee. Students wishing to apply for these Scholarships should indicate their interest. The only requirement for application is that they also join the IACFP (go to **www.aa4cfp.org**) or the ACJS (**www.acjs.org**) as student members.

VENUE AND ACCOMODATION

The ICPA Annual Conference with the theme **'Beyond Prisons- The Way Forward'** will be taking place at the Marriott Chateau Champlain Hotel in Montreal, Canada. For more information, registration and booking accommodation, please visit: **www.icpa.ca/montreal2018**

True Stories or Sensational Crime Fiction? Media Bias and Crime Reporting in Canada

BRANDI CHRISMAS
BA Student, Arts Faculty, University of Manitoba

Brandi Chrismas criticizes media for sensational crime reporting that over-represents violent crime, giving the impression of more violent crime than is really going on. Since the public tends to believe what they see in the news, over-reporting can skew perceptions of public safety, create unfounded stereotypes about certain types or groups of people, and even affect government policy making. The author recommends more transparency in media in a context of accountability standards for proportional representation of crimes being made available to the public as an avenue for information and complaints.

The media commonly zeros in on the most serious, high profile crimes, which most often involve extreme violence or sex. The famous aphorism "if it bleeds it leads" (Pooley, 1989) seems to play out with great predictability, on a daily basis, in print, radio, and televised news mediums. Violent crime and crime involving sex do occur, but not with the frequency portrayed in the media (Roberts & Grossman, 2016). Overreporting by media of serious crimes is serious because it has a potential for skewing public perceptions about safety, creating unfounded stereotypes about certain types or groups of people on looks, and, in so doing, affecting government policy making.

Barak (1994) found that the crimes portrayed in the media—and which may subsequently dominate public consciousness—are not misdemeanors, the most common crimes--but felonies, the rarest ones. A survey conducted in 2010 confirmed that the crime rate in Canada had decreased, however, Grossman and Roberts (2016) report that declining or stable crime rates is not as sexy as hysteria over increasing violence, and therefore tend to be underreported. Bjornstrom et al (2010) describe how media portrayals of crime can shape public opinion about the frequency of different types of crime and their nature and how offenders and victims are viewed.

WHY MEDIA VIVIDLY EMBRACES MURDER, SEX, AND VIOLENCE

Stories involving murder, sex and violence get the most attention from the press, even though property crime is statistically more likely than murder (Roberts & Grossman, 2016). Barak (1994) found that "87% of televised crime news consists of murder, robbery, kidnapping, and aggravated assault" (p.136). Focusing news on violent crimes can create a false impression about the amount of violent crime as opposed to other forms (Bjornstrom, 2010). For example, according to Statistics Canada the above-noted categories of violent crime actually account for only four percent of overall crime (Statistics Canada, 2014). Bjornstrom et al (2010) reported that "crimes are likely to receive more attention to the extent that they depart from dominant cultural norms about

what is normal, healthy or clean (cultural deviance), as when participants are involved with drugs or gangs, or victims are regarded as especially vulnerable" (p.275).

Roberts and Grossman (2016) explains "just as the media tends to overemphasize rare and unusual crimes, they similarly selectively report rare and unusual sentences- [court imposed prison sentences] that is, sentences that appear to be unusually lenient" (p.33). News must sell—it is big business—so it must attract attention through an emphasis on novelty. As Roberts and Grossman (2016) have illustrated, people just aren't interested in everyday events, and "the over emphasis on violence is a form of personalization" (Roberts & Grossman, 2016, p.34).

Barak (1994) explains that crime reporting in the media is a "cumulative or incremental process, in which each issue is to some extent built upon its predecessor, in the context of a steadily developing fund of socially available knowledge" (p.134). It is in this way that public discourse is shaped, with popular perceptions of crime developing in a void that may or may not be close to reality. This is serious, because popular culture is connected to and influenced by media.

MEDIA (OVER)REPRESENTATIONS AND THE CRIMINALIZATION OF CERTAIN GROUPS

Criminals and victims are also not represented accurately in mass media. Barak (1994) argues that the mass media often portrays criminals as choosing to commit crimes, glossing over the social determinants of poverty and disparity that often play a role in affecting people to become involved in crime. Young female offenders are given a disproportionate amount of attention, especially if they are accused of violent acts, because such acts are unusual for females (Roberts & Grossman, 2016). Bjornstrom et al (2010) explain that crime perpetrators who are overrepresented in the media, such as males or people of colour for example, are at risk of racial or gender stereotyping, which has a variety of impacts on society and may even reinforce public hostility toward such groups. In addition, individuals who are overrepresented as victims, such as females or whites, may "promote misleading views of what populations are the most vulnerable to crime, or who should fear crime" (Bjornstorm, et al, 2010, p.269). Bjornstorm et al (2010) report that "racial minorities are overrepresented in news stories focused on perpetrators of violent crime", thus giving the false impression that racial minorities are the sole perpetrators of violent crimes (p.270). Bjornstrom et al (2010) argue that "news is about the powerful" and controlled by elite, white males, thus it is often reported inaccurately in order to achieve their interests (p.275).

The offender's social status plays a great role as well (Roberts & Grossman, 2016). Roberts & Grossman explain, "almost any crime committed by a celebrity is deemed newsworthy, given the offender is familiar" (2016, p.31). Bjornstrom et al (2010) further stress that "both the context of the story itself and the social structural context within which news stories are reported are relevant to ethnic and racial portrayals in crime news" (p.269). Media often portrays criminals as vengeful ruthless animals, and victims as random, helpless and innocent (Barak, 1994). While it is conventional wisdom that many violent crimes involve people who are familiar with each other (Buckingham, 2004), the media seems to downplay familial violence, preferring to portray it as only occurring between strangers. Barak (1994) explains that sex crime victims are portrayed in two ways; (1) as having provoked the predator with sexuality, or (2) someone who is pure and innocent and is a true victim. These portrayals, shape the public view of the type of crime, the criminal and about the victim. In this day and age, when the sweeping widespread sexual oppression of women in North America is coming to light; it is incumbent on a responsible media to not demonize women who have been sexually harassed, assaulted, shamed and labelled. This is crucial in the courts, where many women have not come forward in the past as they did not want to go through cross-examination and blaming for "allowing" themselves to be victimized.

MEDIA AND THE CJS: A STRAINED RELATIONSHIP

"Many justice reporters have just limited knowledge and experience of the justice system", they rely heavily on other resources such as the police and government officials for information about crimes (Roberts & Grossman, 2016, p.35). Government officials also rely on the media to highlight stories for the public; however, the relationship between journalists and government officials is a strained

one. For example, Chrismas (2012) has described the police media relationship as an "arranged marriage" in which both parties need each other but there is much tension. The police and the criminal justice system also face public scrutiny consistently. Barak (1994) argues that "the police recognize the reality that they will grow and be nurtured if they are perceived as crime fighters, but not if the public recognizes their inability to protect people against crime" (p.140). Some people fear that media coverage of crimes might lead the public to support a more punitive approach to criminal justice (Roberts & Grossman, 2016). In this way, the media can be seen as having created the news based on what will sell and, in turn, what they choose for public broadcast affects public/social discourse.

As Edward Herman and Noam Chomsky point out in their seminal book, *Manufacturing Consent: The Political Economy of the Mass Media* (1988), the media is first and foremost a business; so, if stories that bleed are what sells, then that is likely what the corporate media masters will ensure is released. Disproportionate focus on extreme violence catches peoples` attention and that suits the business side of media outlets. The public is an immense and profitable market. It's fine to say if people stopped buying sensationalistic news, the market itself would dictate a change. Indeed, as Roberts and Grossman (2016) explain "there is little that influences the media more than the desires of its consumers" (p.36). This also begs the question, does the public not share in the responsibility of what the media puts out there and the false perceptions it fosters in so doing? While it's true to say that the public itself has the ability to change the news by rejecting sensational crime fiction, this outcome is unlikely as it would put a lot of pressure on an unpaid public that is relatively unskilled when it comes to news production.

There is an element of trust by the public that journalists will report with integrity and the best interest of community in mind. Perhaps if media were more transparent in so much as standards of accountability for the proportional representation of crimes be made known to the public so as to provide a mechanism by which that individuals could challenge media outlets when issues appear to be over- or under-represented. More stringent laws and oversight by government could arguably ensure greater control over sensationalism, but there is a fine line between ensuring accountability in a democratic state such as Canada, where freedom of speech is among our most cherished rights. ■

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RÉSUMÉ

True Stories or Sensational Crime Fiction? Media Bias and Crime Reporting in Canada

BRANDI CHRISMAS
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Brandi Chrismas critique les médias pour leur couverture sensationnaliste de la criminalité qui surreprésente les crimes violents, donnant ainsi l'impression qu'il y a plus de violence qu'il n'y en a réellement. Étant donné que la population a tendance à croire ce qui est présenté dans les reportages, le nombre exagéré de nouvelles sur la criminalité peut fausser les perceptions sur la sécurité de la population, générer des stéréotypes non fondés sur certains types ou groupes de personnes et même affecter les politiques gouvernementales. L'auteure recommande une plus grande transparence médiatique ainsi que l'implantation de normes de responsabilisation afin que la population puisse s'informer sur la représentation proportionnelle des crimes ou s'en plaindre.

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